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General and complete disarmament: taking forward multilateral nuclear disarmament negotiations

Taking forward multilateral nuclear disarmament negotiations

Note by the Secretary-General

The Secretary-General has the honour to transmit herewith the report of the Open-ended Working Group taking forward multilateral nuclear disarmament negotiations established by the General Assembly in its resolution 70/33 to substantively address concrete effective legal measures, legal provisions and norms that will need to be concluded to attain and maintain a world without nuclear weapons and also to substantively address recommendations on other measures that could contribute to taking forward multilateral nuclear disarmament negotiations, including but not limited to: (a) transparency measures related to the risks associated with existing nuclear weapons; (b) measures to reduce and eliminate the risk of accidental, mistaken, unauthorized or intentional nuclear weapon detonations; and (c) additional measures to increase awareness and understanding of the complexity of and interrelationship between the wide range of humanitarian consequences that would result from any nuclear detonation.

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Report of the Open-ended Working Group taking forward multilateral nuclear disarmament negotiations

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I. Introduction

1. In its resolution 70/33, entitled "Taking forward multilateral nuclear disarmament negotiations", the General Assembly reiterated that the universal objective of taking forward multilateral nuclear disarmament negotiations remains the achievement and maintenance of a world without nuclear weapons, and emphasized the importance of addressing issues related to nuclear weapons in a comprehensive, inclusive, interactive and constructive manner, for the advancement of multilateral nuclear disarmament negotiations.

2. By paragraphs 2 and 3 of that same resolution, the General Assembly decided to convene an open-ended working group to substantively address concrete effective legal measures, legal provisions and norms that would need to be concluded to attain and maintain a world without nuclear weapons, and to also substantively address recommendations on other measures that could contribute to taking forward multilateral nuclear disarmament negotiations, including but not limited to: (a) transparency measures related to the risks associated with existing nuclear weapons; (b) measures to reduce and eliminate the risk of accidental, mistaken, unauthorized or intentional nuclear weapon detonations; and (c) additional measures to increase awareness and understanding of the complexity of and interrelationship between the wide range of humanitarian consequences that would result from any nuclear detonation.

3. By paragraph 7 of the same resolution, the General Assembly also decided that the open-ended working group should submit a report on its substantive work and agreed recommendations to the General Assembly at its seventy-first session, which would assess progress made, taking into account developments in other relevant forums. The present report is submitted pursuant to that request.

II. Organizational matters

A. Opening and duration of the session

4. Pursuant to the provisions of paragraph 5 of General Assembly resolution 70/33, the Open-ended Working Group held an organizational meeting on 28 January 2016 at which the Chair was nominated and a provisional agenda circulated. The Working Group held a total of 30 substantive meetings, from 22 to 26 February, from 2 to 4 and from 9 to 13 May and on 5, 16, 17 and 19 August 2016. A number of informal meetings were also held.

5. The Office for Disarmament Affairs provided substantive support to the Working Group.

6. The first plenary meeting was opened by the Acting Director of the Geneva branch of the Office for Disarmament Affairs, who oversaw the election of the Chair of the Working Group.

B. Officers

7. At its first plenary meeting, on 22 February 2016, the Working Group elected by acclamation Thani Thongphakdi (Thailand) as its Chair.

C. Adoption of the agenda and participation

8. At the same meeting, the Working Group adopted its agenda (A/AC.286/1), which read as follows:

1. Opening of the session.
2. Election of the Chairperson.
3. Adoption of the agenda.
4. Organization of work.
5. Taking forward multilateral nuclear disarmament negotiations:
   (a) Concrete effective legal measures, legal provisions and norms that will need to be concluded to attain and maintain a world without nuclear weapons;
   (b) Recommendations on other measures that could contribute to taking forward multilateral nuclear disarmament negotiations, including but not limited to:
      (i) Transparency measures related to the risks associated with existing nuclear weapons;
      (ii) Measures to reduce and eliminate the risk of accidental, mistaken, unauthorized or intentional nuclear weapon detonations;
      (iii) Additional measures to increase awareness and understanding of the complexity of and interrelationship between the wide range of humanitarian consequences that would result from any nuclear detonation.
6. Report to the General Assembly at its seventy-first session.
7. Any other business.

9. At the same meeting, the Working Group decided on the modalities for the broad participation of representatives of international organizations, civil society and academia in its work in accordance to the provisions of paragraph 5 of General Assembly resolution 70/33.

D. Documentation

10. The Working Group had before it the following:

(a) Provisional agenda, submitted by the Chair-designate (A/AC.286/1);

(b) Synthesis paper, submitted by the Chair (A/AC.286/2).

11. The Working Group also had before it a number of working papers submitted by the Chair, Member States, international organizations, institutions and non-governmental organizations, a list of which appears in annex III to the present report.

III. Proceedings of the Open-ended Working Group

A. General

12. Pursuant to its mandate, as contained in General Assembly resolution 70/33, the Working Group addressed, in an open, inclusive and transparent manner, various issues related to nuclear disarmament, including: possible pathways to nuclear disarmament; what would constitute effective legal measures, legal provisions and norms that will need to be concluded to attain and maintain a world without nuclear weapons; and other measures that could contribute to taking forward multilateral nuclear disarmament negotiations. Deliberations were carried out without prejudice to the eventual outcome or to national positions, which allowed for a frank, constructive and participatory discussion on the different topics under its mandate.

13. The Working Group recalled that the General Assembly had encouraged all Member States to participate in the Working Group, and in this connection, the Group regretted that the nuclear-weapon States and other States possessing nuclear weapons had not participated in its work.

14. The Working Group welcomed the participation and contributions of international organizations and civil society.

15. The Working Group heard addresses by: Kofi Annan, former Secretary-General of the United Nations; Michael Møller, Director-General of the United Nations Office at Geneva, Secretary-General of the Conference on Disarmament and Personal Representative of the Secretary-General to the Conference on Disarmament; Kim Won-soo, Under-Secretary-General and High Representative for Disarmament Affairs; and Setsuko Thurlow, a nuclear bomb survivor.

B. Deliberations of the Open-ended Working Group

16. In order to take stock of the current status of multilateral nuclear disarmament, the Open-ended Working Group held a thematic discussion, with the participation of Elayne Whyte Gomez, Permanent Representative of Costa Rica to the United Nations Office at Geneva, on the results achieved by the Working Group to develop proposals to take forward multilateral nuclear disarmament negotiations for the achievement and maintenance of a world without nuclear weapons in 2013 (see A/68/514), and Tim Caughley, Resident Senior Fellow, United Nations Institute for Disarmament Research (UNIDIR), on developments in the field of nuclear disarmament since 2013.

17. The deliberations of the Working Group during its meetings from 22 to 26 February 2016 were structured around the work of the following two panels:

(a) **Panel I:** on substantively addressing concrete effective legal measures, legal provisions and norms that would need to be concluded to attain and maintain a world without nuclear weapons, with Gro Nystuen, International Law and Policy Institute, Rebecca Johnson, Acronym Institute for Disarmament Diplomacy, Kathleen Lawand, International Committee of the Red Cross (ICRC), and Louis Maresca, ICRC, taking part as panellists;

(b) **Panel II:** on substantively addressing recommendations on other measures that could contribute to taking forward multilateral nuclear disarmament

negotiations: (i) transparency measures related to the risks associated with existing nuclear weapons; (ii) measures to reduce and eliminate the risk of accidental, mistaken, unauthorized or intentional nuclear weapon detonations; (iii) additional measures to increase awareness and understanding of the complexity of and interrelationship between the wide range of humanitarian consequences that would result from any nuclear detonation; and (iv) other measures, with Tariq Rauf, Stockholm International Peace Research Institute, Beyza Unal, Chatham House, Pavel Podvig, UNIDIR, and John Borrie, UNIDIR, taking part as panellists.

18. The deliberations of the Working Group during its meetings from 2 to 4 and from 9 to 13 May 2016 were structured around six panels, as follows:

(a) **Panel I:** on measures to reduce and eliminate the risk of accidental, mistaken, unauthorized or intentional nuclear weapon detonations, with Patricia Lewis, Chatham House, taking part as a panellist;

(b) **Panel II:** on transparency measures related to the risks associated with existing nuclear weapons, with Piet de Klerk, International Partnership for Nuclear Disarmament Verification, taking part as a panellist;

(c) **Panel III:** on additional measures to increase awareness and understanding of the complexity of and interrelationship between the wide range of humanitarian consequences that would result from any nuclear detonation, with Ira Helfand, International Physicians for the Prevention of Nuclear War, and Sara Sekkenes, United Nations Development Programme, taking part as panellists;

(d) **Panel IV:** on essential elements that would comprise effective legal measures, legal provisions and norms that will need to be concluded to attain and maintain a world without nuclear weapons, with Stuart Casey-Maslen, University of Pretoria, taking part as a panellist;

(e) **Panel V:** on possible pathways to take forward multilateral nuclear disarmament negotiations, with Nick Ritchie, University of York, taking part as a panellist;

(f) **Panel VI:** on other measures, including reviewing the role of nuclear weapons in the security and other contexts of the twenty-first century, with James E. Cartwright, Global Zero Commission on Nuclear Risk Reduction, and Paul Ingram, British American Security Information Council, taking part as panellists.

IV. Substantive discussions

A. General exchange of views

19. The Open-ended Working Group reaffirmed the resolve to achieve and maintain a world without nuclear weapons, which remains the universal objective of taking forward multilateral nuclear disarmament negotiations. The Working Group emphasized the importance of addressing issues related to nuclear weapons in a comprehensive, inclusive, interactive and constructive manner for the purpose of the advancement of multilateral nuclear disarmament negotiations. In this regard, the Working Group recalled the unequivocal undertaking by the nuclear-weapon States at the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons to bring about the total elimination of their nuclear weapons.

20. The work of the Working Group was underpinned by deep concern about the threat to humanity posed by the existence of nuclear weapons and the catastrophic humanitarian consequences of any nuclear weapon detonation. The risk of these catastrophic humanitarian consequences will remain as long as nuclear weapons exist. The increased awareness of and well-documented presentations on the humanitarian impact of nuclear weapons compel urgent and necessary action by all States, leading to a world without nuclear weapons. The Working Group also reaffirmed the need for all States to comply at all times with applicable international law, including international humanitarian law.

21. Against these considerations and the growing awareness of the humanitarian impact of nuclear weapons, it was noted with concern that progress in multilateral nuclear disarmament has been slow. Concern was also raised regarding the serious challenges faced by the existing United Nations disarmament machinery, including the Conference on Disarmament, which has not been able to carry out negotiations pursuant to an agreed programme of work in two decades, and the United Nations Disarmament Commission, which has not produced a substantive outcome since 1999, as well as the 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, at which the parties had failed to reach an agreement on a substantive final document.

22. The Working Group discussed the current status of the international nuclear disarmament and non-proliferation regime with a view to identifying areas where additional legal measures, provisions and norms need to be elaborated or concluded in order to attain and maintain a world without nuclear weapons.

23. The Working Group recalled that article VI of the Treaty on the Non-Proliferation of Nuclear Weapons established an obligation on each of the States parties to, inter alia, pursue negotiations in good faith on effective measures relating to nuclear disarmament. In addition, the Working Group, while recalling the decisions and the resolution adopted at the 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, reaffirmed the need for the full implementation of paragraphs 3 and 4 (c) of decision 2, entitled "Principles and objectives for nuclear non-proliferation and disarmament", the practical steps for achieving nuclear disarmament agreed upon by consensus in the Final Document of the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, as well as the conclusions and recommendations for follow-on actions agreed upon at the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons.

24. The Working Group noted that the text of the Treaty on the Non-Proliferation of Nuclear Weapons does not provide specific guidance with respect to specific effective measures that should be pursued in fulfilment of its article VI. The Working Group noted that the development of effective legal measures has been required for the implementation of the nuclear disarmament obligation contained in article VI.

25. Many States expressed the view that there is a legal gap in the current international framework for the prohibition and elimination of nuclear weapons. They further noted that other legal measures that may be required to attain and maintain a world without nuclear weapons, such as general prohibitions against the possession, use, development, production, stockpiling and transfer of such weapons,

as well as measures for their elimination, have yet to be considered in detail and must be negotiated with urgency.

26. On the other hand, a number of States did not consider that there was any legal gap in the current international framework for nuclear disarmament. They expressed the view that the Treaty on the Non-Proliferation of Nuclear Weapons and the outcomes of its review conferences provide an essential framework for the pursuit of nuclear disarmament.

27. A number of States stressed that the international security environment, the current geopolitical situation and the role of nuclear weapons in existing security doctrines should be taken into account in the pursuit of any effective measures for nuclear disarmament. They argued that approaches that did not take these factors into account would not succeed in bringing about the participation of nuclear-armed States and other States that rely on nuclear weapons in their security doctrines. They noted the importance of confidence-building measures as a means for creating conditions to facilitate further major reductions in nuclear arsenals, including efforts to reduce levels of hostility and tensions between States, particularly between those possessing nuclear weapons.

28. On the other hand, many States stressed that collective security should take priority over national interest with respect to the question of nuclear weapons. They argued that there is no contradiction between national security and collective security. In this regard, they noted that from the humanitarian perspective, the consequences of nuclear weapons on human populations and the risks and threat posed by the continued existence of nuclear weapons had been examined in the context of the three Conferences on the Humanitarian Impact of Nuclear Weapons (held in Oslo; Nayarit, Mexico; and Vienna). They also expressed the view that, in light of their transboundary and potentially global impact, the risk posed by nuclear weapons was too high and that the existence of nuclear weapons within a State does not increase but rather lowers the protection and security of its population.

29. The Working Group considered that the best chance for reaching a world without nuclear weapons would be through the involvement of all States that possess nuclear weapons.

30. A number of States noted the steps taken by nuclear-weapon States to reduce the overall number of nuclear weapons, to reduce the role of nuclear weapons in security doctrines and to extend the scope of their negative security assurances.

31. It was however noted by many States that such steps had resulted in only a partial reduction in the role of nuclear weapons while still leaving intact a capacity to hold entire societies at risk. Concerns were expressed regarding continued efforts by nuclear-weapon States towards the qualitative improvement and modernization of their nuclear arsenals, as well as their continued reliance on nuclear weapons. Concern was also expressed regarding the perceived weakening of norms relating to the use or threat of use of nuclear weapons.

32. Many States therefore emphasized the need to shift from a focus on reducing the role of nuclear weapons to stigmatizing nuclear weapons, including by changing international and public attitudes regarding policies and practices that are premised on the acceptance of such weapons. This shift would be consistent with the humanitarian pledge issued at the Vienna Conference on the Humanitarian Impact of Nuclear Weapons in December 2014 for the prohibition and elimination of nuclear

weapons, in which subscribing States committed to the stigmatization, prohibition and elimination of nuclear weapons in the light of their unacceptable humanitarian consequences, environmental impact and other associated risks.

B. Concrete effective legal measures, legal provisions and norms that will need to be concluded to attain and maintain a world without nuclear weapons

33. The Working Group affirmed that the development of any effective legal measures for nuclear disarmament can only be aimed at strengthening the nuclear disarmament and non-proliferation regime and at implementing article VI of the Treaty on the Non-Proliferation of Nuclear Weapons and that such measures should complement and strengthen the Treaty. In addressing concrete effective legal measures, legal provisions and norms that would need to be concluded to attain and maintain a world without nuclear weapons, many possible approaches were considered.

34. A majority of States[1] expressed support for the commencement of negotiations in the General Assembly in 2017, open to all States, international organizations and civil society, on a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination, which would establish general prohibitions and obligations as well as a political commitment to achieve and maintain a nuclear-weapon-free world. Representatives of civil society supported this view.

35. Possible elements of such an instrument could include: (a) prohibitions on the acquisition, possession, stockpiling, development, testing and production of nuclear weapons; (b) prohibitions on participating in any use of nuclear weapons, including through participating in nuclear war planning, participating in the targeting of nuclear weapons and training personnel to take control of nuclear weapons; (c) prohibitions on permitting nuclear weapons in national territory, including on permitting vessels with nuclear weapons in ports and territorial seas, permitting aircraft with nuclear weapons from entering national airspace, permitting nuclear weapons from being transited through national territory, permitting nuclear weapons from being stationed or deployed on national territory; (d) prohibitions on financing nuclear weapon activities or on providing special fissionable material to any states that do not apply International Atomic Energy Agency (IAEA) comprehensive safeguards; (e) prohibitions on assisting, encouraging or inducing, directly or indirectly, any activity prohibited by the treaty; and (f) recognition of the rights of victims of the use and testing of nuclear weapons and a commitment to provide assistance to victims and to environmental remediation. It was noted that the elements and provisions to be included in such an instrument would be subject to its negotiation.

36. A legally binding instrument prohibiting nuclear weapons would be an interim or partial step towards nuclear disarmament as it would not include measures for elimination and would instead leave measures for the irreversible, verifiable and transparent destruction of nuclear weapons as a matter for future negotiations. It

[1] Comprising, inter alia, members of the African Group (54 States), the Association of Southeast Asian Nations (10 States) and the Community of Latin American and Caribbean States (33 States), as well as a number of States from Asia and the Pacific and Europe.

would also contribute to the progressive stigmatization of nuclear weapons. States supporting such an instrument considered it to be the most viable option for immediate action as it would not need universal support for the commencement of negotiations or for its entry into force. It was suggested, pursuant to the decision of the General Assembly, in its resolution 68/32, to convene, no later than 2018, a United Nations high-level international conference on nuclear disarmament to review the progress made in achieving the objective of the total elimination of nuclear weapons, in particular on the elements of a comprehensive convention on nuclear weapons.

37. Many States supported a comprehensive nuclear weapons convention, which would set out general obligations, prohibitions and practical arrangements for time-bound, irreversible and verifiable nuclear disarmament. These States considered that the process for negotiating such a convention and bringing negotiations to a conclusion should include a phased programme for the complete elimination of nuclear weapons within a specified time frame. Such a convention would constitute a non-discriminatory and internationally verifiable legal arrangement that would give States assurances that nuclear weapons had been destroyed and that no new weapons were being produced. It was noted that it would be technically difficult to negotiate detailed provisions for the verified elimination of nuclear weapons without the involvement of States possessing nuclear weapons. While many States supported the immediate commencement of negotiations on a comprehensive nuclear weapons convention, it was noted that such a convention could only be effective with the participation of the States possessing nuclear weapons. Many of these States also supported the negotiation of a legally binding instrument to prohibit nuclear weapons. It was also suggested, in this context, that the above-mentioned United Nations high-level international conference to convene no later than 2018, pursuant to resolution 68/32, should review progress on those negotiations.

38. Some States described, as a possible option, a framework agreement, which would comprise either a set of mutually reinforcing instruments dealing progressively with various aspects of the nuclear disarmament process, or a chapeau agreement followed by subsidiary agreements or protocols that would lead gradually to a nuclear-weapon-free world. Such an approach would provide for flexibility, leave room for confidence-building measures and allow for a smooth transition towards nuclear disarmament, simultaneously taking into account the concerns of all States. It would not necessarily include a specific time frame for accomplishing the elimination of nuclear weapons. It was proposed that a first subsidiary agreement or protocol that could be negotiated might be a prohibition on the use or threat of use of nuclear weapons.

39. Some States discussed a hybrid approach, which would include the immediate negotiation of a treaty prohibiting nuclear weapons. Such a treaty would be complemented by protocols relating to national declarations, national implementation, verification and phases of destruction, assistance and technical cooperation and a non-discriminatory verification regime to be implemented following the complete elimination of nuclear weapons. Proponents of this approach considered that it would provide a framework for the progressive inclusion of all States initially resistant to joining, thus reflecting the inclusiveness of the framework approach, while providing for the same level of comprehensiveness and effectiveness as the nuclear weapons convention.

40. A number of States[2] expressed support for a "progressive approach", focusing on the importance of the existing global regime, in particular the Treaty on the Non-Proliferation of Nuclear Weapons, which already contains treaty-level commitments on the goal of eliminating all nuclear weapons. Within the framework of the Treaty, both non-nuclear-weapon States and nuclear-weapon States needed to work together on the building blocks of the non-proliferation architecture, consisting of parallel and simultaneous effective legal and non-legal measures which can be of a multilateral, plurilateral, bilateral or unilateral nature, and which are mutually reinforcing. An important landmark would be a "minimization point", at which the number of weapons would be reduced to a very low amount and an internationally reliable verification regime with effective verification techniques and methods would be established. These States considered that when "global zero" comes within reach, additional legal measures would then be needed to achieve and maintain a world without nuclear weapons. At that point, it would be necessary to consider how a non-discriminatory and internationally verifiable nuclear disarmament framework, such as a multilateral nuclear weapons convention or a plurilateral arrangement among those with nuclear weapons, would be drawn up as the final building block. They considered that significant work remained ahead before this point could be attained. The view was expressed that many measures proposed under the progressive approach reflected existing commitments that enjoyed consensus.

41. States supporting the progressive approach supported the following as effective legal measures: (a) achieving the early entry into force of the Comprehensive Nuclear-Test-Ban Treaty; (b) negotiating a verifiable and non-discriminatory treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices; (c) commencing negotiations on a post-New Strategic Arms Reduction Treaty (START) between the United States of America and the Russian Federation; (d) achieving universal adherence to the International Convention for the Suppression of Acts of Nuclear Terrorism; (e) promoting full implementation of the 2005 amendment to the Convention on the Physical Protection of Nuclear Material; (f) providing support for the practical implementation of Security Council resolution 1540 (2004); (g) strengthening nuclear-weapon-free zones and creating new nuclear-weapon-free zones and weapons-of-mass-destruction-free zones; and (h) supporting and strengthening the IAEA safeguards system. A full list of the legal and non-legal measures proposed under the progressive approach appears in annex I to the present report.

42. Another approach discussed was the idea of an additional protocol to the Treaty on the Non-Proliferation of Nuclear Weapons, which could be negotiated as a separate instrument. Such an approach would keep nuclear disarmament as an integral part of the Treaty.

43. The Working Group also discussed criteria for evaluating the feasibility and effectiveness of the various approaches for nuclear disarmament. Under each approach, some States suggested that criteria could include scope and content, required membership, normative value, political viability, maturity and potential to contribute to achieving and maintaining a world without nuclear weapons. Some States also expressed the view that the only criterion that should be considered was scope of the adopted approach. It was further noted by some States that the various

[2] Comprising, inter alia, the 24 States advocating the progressive approach.

approaches were partially overlapping, not necessarily mutually exclusive and could make different contributions to nuclear disarmament.

44. While different approaches would entail different types of legal instruments or sets of instruments, many elements were suggested that could form part of such legal instruments. In this regard, many States suggested that these could include core elements, linked directly to the prohibition of nuclear weapons, other elements associated with the elimination of nuclear weapons, including those related to fissile material, and verification, as well as elements linked to other objectives such as victim assistance, some of which have already been mentioned above. Without prejudice to any future elaboration of effective legal measures, a list of suggested elements appears in annex II to the present report.

45. It was noted that many of these elements coincide with obligations undertaken by some States pursuant to their existing treaty-based commitments, including through the Treaty on the Non-Proliferation of Nuclear Weapons and the various nuclear-weapon-free zone treaties. Certain provisions were considered to be analogous with basic obligations contained within the Biological Weapons Convention and the Chemical Weapons Convention. Some measures could only be pursued and implemented with the engagement and cooperation of the States possessing nuclear weapons. Many States considered that the pursuit of many other measures and provisions could benefit both disarmament and non-proliferation objectives, even if pursued exclusively by non-nuclear-weapon States.

46. It was noted that there is more than one way in which nuclear disarmament can be achieved. Various possible elements and provisions could be pursued under each of the various approaches and many could be pursued across more than one. It was noted that possible elements and provisions vary in their connection to the process of disarmament and in their potential impact on efforts to achieve and maintain a world without nuclear weapons. It was also noted that certain measures vary in their applicability to all States, nuclear-armed States, non-nuclear-armed States and other States that continue to maintain a role for nuclear weapons in their security doctrines.

C. Other measures that could contribute to taking forward multilateral nuclear disarmament negotiations

47. The Working Group considered other measures that could contribute to taking forward multilateral disarmament negotiations. Transparency, risk reduction and awareness-raising are important to the achievement of the verifiability and irreversibility of nuclear disarmament.

Transparency measures related to the risks associated with existing nuclear weapons

48. The Working Group underscored the principle of transparency, along with the principles of irreversibility and verifiability, which it deemed crucial to the process of nuclear disarmament. Without transparency, nuclear disarmament cannot be credibly verified, nor would States have adequate confidence that nuclear disarmament measures have been accomplished in an irreversible manner. Increased transparency also alleviates mistrust among States and builds confidence and trust at regional and international levels.

49. The Working Group stressed the importance of ensuring access to information reported by the States possessing nuclear weapons to the public and to neighbouring and other States. In this connection, many States supported the establishment of a reporting mechanism within the framework of the United Nations with a view to enhancing accountability and facilitating nuclear disarmament.

50. With respect to the public disclosure of information related to nuclear weapon programmes and activities, the need to protect sensitive information from malicious use by terrorists, criminals and non-State actors was underscored.

51. Various transparency measures were suggested by different States related to the risks associated with existing nuclear weapons, including that States possessing nuclear weapons should provide standardized information at regular intervals on, inter alia:

(a) The number, type (strategic or non-strategic) and status (deployed or non-deployed, and the alert status) of nuclear warheads within their territories as well as those deployed in the territories of other countries;

(b) The number and the type of delivery vehicles;

(c) The measures taken to reduce the role and significance of nuclear weapons in military and security concepts, doctrines and policies;

(d) The measures taken to reduce the risk of unintended, unauthorized or accidental use of nuclear weapons;

(e) The measures taken to de-alert or reduce the operational readiness of nuclear weapon systems;

(f) The number and type of weapons and delivery systems dismantled and reduced as part of nuclear disarmament efforts;

(g) The amount of fissile material produced for military purposes: the Working Group considered that baseline information on these issues would also contribute to verification and nuclear disarmament negotiations;

(h) Information about plans, expenditures and number of facilities related to the modernization of nuclear weapons.

52. The above standardized information should be provided to the Secretary-General, who should make such information available to Member States and to the public.

53. Many States also suggested that other States that maintain a role for nuclear weapons in their military and security concepts, doctrines and policies be encouraged to also provide standardized information at regular intervals on, inter alia:

(a) The number, type (strategic or non-strategic) and status (deployed or non-deployed, and the alert status) of nuclear warheads within their territories;

(b) The number and the type of delivery vehicles within their territories;

(c) The measures taken to reduce the role and significance of nuclear weapons in military and security concepts, doctrines and policies.

Measures to reduce and eliminate the risk of accidental, mistaken, unauthorized or intentional nuclear weapon detonations

54. The Working Group considered that the risk of accidental, mistaken, unauthorized or intentional nuclear weapon detonations would persist for as long as nuclear weapons exist. The only way to eliminate this risk is by achieving the complete elimination of nuclear weapons.

55. The Working Group discussed a number of factors that could contribute to the current and growing risk of a nuclear weapon detonation. These factors include: increasing tensions involving nuclear-armed and other States at the international and regional levels; the vulnerability of nuclear-weapon command and control systems and early warning networks to cyberattacks and attacks by non-State actors; and the growing automation of weapon systems. At the same time, it was acknowledged that the precise nature of the risks was difficult to assess given the lack of transparency in nuclear weapon programmes.

56. Many States expressed particular concern that the maintenance of nuclear weapons at high alert levels could significantly multiply the risks and the threat posed by nuclear weapons and negatively affect the process of nuclear disarmament. In this regard, they considered that measures to reduce the operational status of nuclear weapons systems would increase human and international security and represent an interim step towards nuclear disarmament as well as an effective measure to mitigate some of the risks associated with nuclear weapons.

57. While the Working Group expressed support for the implementation of measures to reduce risks and increase safety, pending the total elimination of nuclear weapons, it was emphasized that this does not imply support for any possession or use of nuclear weapons.

58. Various measures were suggested by different States to reduce the risk of accidental, mistaken, unauthorized or intentional nuclear weapon detonations, pending the total elimination of nuclear weapons, including that States possessing nuclear weapons and other relevant States should undertake further practical measures to:

(a) Reduce the number of deployed strategic nuclear weapons;

(b) Reduce the number of non-strategic and non-deployed nuclear weapons;

(c) Reduce nuclear weapons designated as surplus stockpiles;

(d) Rapidly moving towards an overall reduction of the global stockpile of any type of nuclear weapons;

(e) Reduce risks associated with nuclear weapon delivery vehicles, in particular nuclear-armed cruise missiles, including actions to limit, prevent deployment of and lead to a ban on all nuclear-armed cruise missiles;

(f) Commit to reduce, or at least freeze, the number of nuclear weapons in holding pending the commencement and conclusion of plurilateral negotiations on nuclear weapons reductions;

(g) Reduce the role of nuclear weapons in security doctrines and the value assigned to the role of nuclear weapons in military training schools;

(h) Develop and implement nuclear weapons policies that reduce and eliminate any dependence on early launch or launch-on-warning postures and refrain from increasing the alert levels of their nuclear forces;

(i) Conclude agreements to eliminate launch-on-warning from their operational settings and carry out a phased stand-down of high-alert strategic forces;

(j) Begin developing a long-term formal agreement to lower the alert level for the use of nuclear weapons, with all agreed steps to be measurable and carried out within an agreed time frame;

(k) Increase the safety and security of nuclear weapon stockpiles;

(l) Ensure the protection of nuclear-weapon command and control systems from cyberthreats;

(m) Pending the entry into force of the Comprehensive Nuclear-Test-Ban Treaty, refrain from the development and use of new nuclear weapon technologies and any action that would undermine the object and purpose of the Treaty and maintain all existing moratoriums on nuclear-weapon-test explosions;

(n) Pending negotiations and the entry into force of a treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices, maintain and declare moratoriums on the production of fissile material for nuclear weapons purposes;

(o) Dismantle or convert for peaceful uses facilities for the production of fissile material for use in nuclear weapons or other nuclear explosive devices;

(p) Respect fully their commitments with regard to security assurances, extend such assurances if they have not yet done so and withdraw reservations and interpretative statements on the protocols to the treaties establishing nuclear-weapon-free zones;

(q) Be more transparent regarding accidents involving nuclear weapons and on the steps taken in response to these accidents.

Additional measures to increase awareness and understanding of the complexity of and interrelationship between the wide range of humanitarian consequences that would result from any nuclear detonation

59. The Working Group emphasized the importance of promoting disarmament and non-proliferation education, including on the humanitarian consequences of the use of nuclear weapons in all States, especially in States that possess nuclear weapons. The Working Group recalled that the overall objective of disarmament and non-proliferation education and training is to impart knowledge and skills to individuals in order to empower them to make their contributions, as national and world citizens, to the achievement of concrete disarmament and non-proliferation measures and the ultimate goal of general and complete disarmament under effective international control.

60. The Working Group recognized the respective roles that Member States, the United Nations system, international organizations and civil society, including non-governmental organizations, academia, parliamentarians, the mass media and individuals, can play in enhancing public awareness about the threat of nuclear weapons, its impact on, inter alia, health and gender, sustainable development,

climate change and environment, the protection of cultural heritage and human rights.

61. The Working Group also stressed the importance of engaging young people, including through the promotion of special youth communicators and student peace ambassadors, in order to pass on knowledge to future generations.

62. Many States considered that raising public awareness on the humanitarian impact of nuclear weapons is important in conveying the facts regarding the risks of a nuclear weapon detonation to a broader audience and in creating thereby an informed citizenry.

63. Various measures were suggested by different States, including measures that all States could take to increase awareness and understanding of the complexity of and interrelationship between the wide range of humanitarian consequences that would result from any nuclear detonation:

(a) Disarmament and non-proliferation education:

(i) Promote disarmament and non-proliferation education, including on the humanitarian consequences of nuclear weapons in all States, especially in States that possess nuclear weapons;

(ii) Promote education and training on peace, disarmament, non-proliferation and international law, including international humanitarian law, as part of school and university curricula, with the objective of fostering critical thinking skills among youth;

(iii) Include information on the atomic bombings of Hiroshima and Nagasaki, as well as on the consequences of nuclear testing, including in the South Pacific and elsewhere, in history textbooks;

(iv) Encourage the employment of simulation and role-playing techniques, which can promote mutual understanding of security concerns and threat perceptions;

(v) Encourage training in the use of open-source tools and technologies, such as geospatial imaging, 3D modelling and big data analysis as a means of promoting societal verification;

(vi) Identify national disarmament and non-proliferation education focal points as a means of facilitating reporting on the implementation of the recommendations of the United Nations study on disarmament and non-proliferation education (A/57/124);

(vii) Support the establishment of youth peace ambassadors to share messages in national and international forums in favour of peace and a world without nuclear weapons;

(b) Understanding of the humanitarian consequences of nuclear weapons:

(i) Promote efforts to raise awareness at the grass-roots level about the consequences of the use of nuclear weapons across national borders and generations, including on interconnected issues such as sustainable development, the environment, climate change, the protection of cultural heritage, human rights, humanitarian action, children's rights, public health and gender;

(ii) Ensure greater emphasis on the unique impact of nuclear weapons on the health of women and girls;

(iii) Support the designation of atomic bomb survivors as special messengers for a world without nuclear weapons;

(iv) Support efforts to raise awareness of the legacy of nuclear testing around the world, including through the commemoration of 29 August as the International Day against Nuclear Tests, translating the stories of nuclear test victims and encouraging visits to former nuclear test sites;

(v) Support the translation of the testimonies of atomic bomb survivors into multiple languages;

(vi) Encourage world leaders, decision-makers, diplomats and academics to visit Hiroshima and Nagasaki in order to experience first-hand the impact of nuclear weapons and to interact with survivors;

(vii) Consider convening additional international conferences on the humanitarian impact of nuclear weapons;

(viii) Support additional research and studies about risks and the long-term consequences associated with nuclear weapons;

(ix) Conduct outreach through all forms of media, including conventional media, such as television, radio and printed materials, as well as social media;

(x) Integrate nuclear disarmament with policymaking, including at the highest levels of global governance, in all other areas which have a global impact such as sustainable development, climate change, food security, cyberterrorism, human rights or gender considerations;

(xi) Make use of the International Day for the Total Elimination of Nuclear Weapons on 26 September as a means to enhance public awareness about the threat of nuclear weapons, including the humanitarian consequences of any nuclear weapon detonation.

Other measures that could contribute to taking forward multilateral nuclear disarmament negotiations

64. The Working Group also considered further measures that could contribute to taking forward multilateral nuclear disarmament negotiations. These included the need for the prompt and effective implementation in good faith of article VI of the Treaty on the Non-Proliferation of Nuclear Weapons, paragraphs 3 and 4 (c) of the decision adopted at the 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons entitled "Principles and objectives for nuclear non-proliferation and disarmament", the practical steps for achieving nuclear disarmament agreed by consensus in the Final Document of the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, as well as the conclusions and recommendations for follow-on actions agreed by the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, particularly on the part of the nuclear-weapon States, including through concrete benchmarks and timelines.

65. Further to the implementation of past commitments, the following measures were also suggested by different States to contribute to taking forward multilateral nuclear disarmament negotiations:

(a) Return immediately to substantive work in the Conference on Disarmament through the adoption of a comprehensive and balanced programme of work, including negotiations on the four core items of its agenda, including nuclear disarmament, a treaty banning the production of fissile materials for nuclear weapons or other nuclear explosive devices on the basis of the report submitted to the Conference in 1995 (CD/1299), the prevention of an arms race in outer space and effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons. A view was expressed that, if the Conference does not commence negotiations on a treaty banning the production of fissile materials, States may consider commencing negotiations outside the Conference. The view was also expressed that the Conference should resume discussions on its membership;

(b) Facilitate further major reductions in nuclear arsenals, including efforts to reduce levels of hostility and tension between States — particularly between those possessing nuclear weapons: confidence-building measures play an important role in this regard;

(c) Support efforts to further develop human and technical capacity in order to improve the capability to detect nuclear explosions, in accordance with the resolution establishing the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBT/MSS/RES/1);

(d) Strengthen nuclear-weapon-free zones and establish new ones, including, as a priority, in the Middle East, including through the implementation of the resolution adopted at the 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons on the Middle East;

(e) Cease all efforts to upgrade and modernize existing nuclear weapons in ways that result in new military capabilities or enable new military missions;

(f) Support measures to minimize the use of highly enriched uranium on a voluntary basis and to use low enriched uranium where technically and economically feasible;

(g) Assess the international legal obligations under international humanitarian law, international human rights law and international environmental law in the context of the use or threat of use of nuclear weapons;

(h) Assess further the ethical dimensions of nuclear weapons in debates and conferences.

V. Conclusions and agreed recommendations

66. The Open-ended Working Group recommended that additional efforts can and should be pursued to elaborate concrete effective legal measures, legal provisions and norms that will need to be concluded to attain and maintain a world without nuclear weapons. The Working Group reaffirmed the importance of the Treaty on the Non-Proliferation of Nuclear Weapons and the commitments made therein and further considered that the pursuit of any such measures, provisions and norms

should complement and strengthen the nuclear disarmament and non-proliferation regime, including the three pillars of the Treaty.

67. The Working Group recommended, with widespread support,[3] the convening, by the General Assembly, of a conference in 2017, open to all States, with the participation and contribution of international organizations and civil society, to negotiate a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination, as outlined in paragraph 34 above. The Working Group recognized that other States[4] did not agree with the above recommendation and that they had recommended that any process to take forward multilateral nuclear disarmament negotiations must address national, international and collective security concerns and supported the pursuit of practical steps, consisting of parallel and simultaneous effective legal and non-legal measures to take forward multilateral nuclear disarmament negotiations, as outlined in paragraphs 40 and 41, for which there was no agreement. The Working Group further recognized the views expressed with regard to other approaches.

68. The Working Group also recommended that States should consider implementing, as appropriate, the various measures suggested in the present report that could contribute to taking forward multilateral nuclear disarmament negotiations, including but not limited to: transparency measures related to the risks associated with existing nuclear weapons; measures to reduce and eliminate the risk of accidental, mistaken, unauthorized or intentional nuclear weapon detonations; additional measures to increase awareness and understanding of the complexity of and interrelationship between the wide range of humanitarian consequences that would result from any nuclear detonation; as well as other measures that could contribute to taking forward multilateral nuclear disarmament negotiations.

VI. Adoption of the report

69. At its meetings held on 16, 17 and 19 August 2016, the Working Group considered item 6, entitled "Report to the General Assembly at its seventy-first session".

70. Following a request for a vote on the draft report as contained in A/AC.286/CRP.3, oral amendments were proposed to paragraph 67, by replacing the words "recognized that there was a recommendation which received" in the first sentence with the words "recommended with", as well as the deletion of the word "also" in the beginning of the second sentence after the words "The Working Group". The Working Group decided to adopt the proposed oral amendments by a non-recorded vote with 62 in favour, 27 against and 8 abstentions.

71. At its final meeting, on 19 August, the Working Group adopted its report as contained in documents A/AC.286/L.1, A/AC.286/CRP.2 and A/AC.286/CRP.3, as orally amended, by a non-recorded vote, with 68 in favour, 22 against and 13 abstentions. Statements were made in an explanation of vote.

[3] States supporting this recommendation comprise, inter alia, members of the African Group (54 States), the Association of South East Asian Nations (10 States) and the Community of Latin American and Caribbean States (33 States), as well as a number of States from Asia and the Pacific and Europe.

[4] States supporting this recommendation comprise, inter alia, the 24 States advocating the progressive approach.

Annex I

Measures proposed under the progressive approach*

1. Effective measures proposed under the progressive approach included:

(a) Achieving the early entry into force of the Comprehensive Nuclear-Test-Ban Treaty;

(b) Negotiating a verifiable and non-discriminatory treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices;

(c) Commencing negotiations on a post-New Strategic Arms Reduction Treaty (START) between the United States of America and the Russian Federation;

(d) Achieving universal adherence to the International Convention for the Suppression of Acts of Nuclear Terrorism;

(e) Promoting full implementation of the 2005 amendment to the Convention on the Physical Protection of Nuclear Material;

(f) Providing support for the practical implementation of Security Council resolution 1540 (2004);

(g) Strengthening nuclear-weapon-free zones and creating new nuclear-weapon-free zones and weapons-of-mass-destruction-free zones;

(h) Supporting and strengthening the International Atomic Energy Agency (IAEA) safeguards system;

(i) Promoting the implementation of the Hague Code of Conduct and contributing to its universal adoption;

(j) Helping to create conditions that would facilitate further major reductions in nuclear arsenals, including confidence-building measures and efforts to reduce levels of hostility and tension between States — particularly among those possessing nuclear weapons.

2. States possessing nuclear weapons, while taking into account relevant security considerations, should also take the following practical concrete measures:

(a) Increasing transparency measures in relation to their nuclear arsenals and fissile material holdings;

(b) Dismantling or converting for peaceful uses facilities for the production of fissile material for use in nuclear weapons or other nuclear explosive devices;

(c) Pending negotiations and the entry into force of a treaty banning the production of fissile material for nuclear weapons or other nuclear explosive nuclear devices, maintaining and declaring moratoriums on the production of fissile material for nuclear weapons purposes;

(d) Designating fissile material no longer required for military purposes and the development of legally binding verification arrangements, within the context of IAEA, to ensure the irreversible removal of such fissile material;

* No agreement was reached on annex I.

(e) Reducing the risk of accidental or unauthorized use of nuclear weapons through further practical measures to reduce the operational status of nuclear weapons systems in ways that promote international stability and security;

(f) Reducing the number of deployed strategic nuclear weapons;

(g) Reducing the number of non-strategic and non-deployed nuclear weapons;

(h) Reducing, or at least freezing, the number of nuclear weapons in holding pending the commencement and conclusion of plurilateral negotiations on nuclear weapons reductions;

(i) Continuing to respect fully their commitments with regard to security assurances or to extend such assurances if they have not yet done so;

(j) Pending the entry into force of the Comprehensive Nuclear-Test-Ban Treaty, maintaining and declaring moratoriums on nuclear weapons tests, as well as restraining from the use of new nuclear weapons technologies and from any action that would defeat the object and purpose of that Treaty.

3. States should further commit to the following additional measures:

(a) Reducing the role of nuclear weapons in security doctrines;

(b) Promoting disarmament and non-prol feration education and awareness-raising, including on the humanitarian consequences of the use of nuclear weapons, as appropriate;

(c) Continuing work on developing verification capabilities, including through the International Partnership for Nuclear Disarmament Verification;

(d) An immediate return to substantive work in the Conference on Disarmament.

Annex II

Suggested elements for effective legal measures that could be included in an international legal instrument*

Element	*Details*
1. General obligations and prohibitions	Prohibitions on the development, testing, including subcritical experiments and supercomputer simulations, production, acquisition, possession, stockpiling, transfer, use and threat of use of nuclear weapons, as well as on the production of weapons-usable fissile material
2. Definition of nuclear weapons	The definition of a nuclear weapon is any device which is capable of releasing nuclear energy in an uncontrolled manner and which has a group of characteristics that is appropriate for use for warlike purposes: an instrument that may be used for the transport or propulsion of the device is not included in this definition if it is separable from the device and not an indivisible part thereof
3. Prohibitions relating to the use or threat of use of nuclear weapons	Prohibitions on participating in any use or threat of use of nuclear weapons
	Prohibition on participating in nuclear war planning
	Prohibition on participating in the targeting of nuclear weapons
	Prohibition on training personnel to take control of and use another State's nuclear weapons
4. Prohibition on development and production	Adoption of measures to prevent the use of new technologies for upgrading existing nuclear-weapon systems, including the prohibition of nuclear-weapon research and development
	Cessation by the nuclear-weapon States of the development and qualitative improvement of nuclear weapons and their means of delivery and related infrastructure
	Prohibition on the development of nuclear weapons and delivery systems could preclude nuclear research and research on the testing of nuclear weapons, including subcritical and other means of testing
	Prohibition from participating financially or otherwise in the production of nuclear weapons
	Addressing issues related to dual-use technology, without prejudice to the inalienable rights of all States to the peaceful use of nuclear energy
5. Deployment	Prohibitions on accepting any stationing, installation or deployment of nuclear weapons

* No agreement was reached on annex II.

Element	*Details*
6. Visitation, transit, overflight, stationing and deployment	Prohibitions on permitting nuclear weapons in national territory, including on permitting vessels with nuclear weapons in ports and territorial seas, permitting aircraft with nuclear weapons from entering national airspace, permitting nuclear weapons from being transited through national territory and permitting nuclear weapons from being stationed or deployed on national territory
7. Nuclear material	Prohibition of the production of any fissionable material which can be used directly to make a nuclear weapon, including separated plutonium and highly enriched uranium: low enriched uranium would be permitted for peaceful purposes
	Placement of all existing fissile material under international safeguards
	Dismantlement or conversion for peaceful use of facilities for the production of fissile material for use in nuclear weapons or other nuclear explosive devices
	Designation of fissile material which is no longer required for military purposes
	Development of legally binding verification arrangements, within the context of IAEA
8. Financing and supply of fissile materials	Prohibitions on financing nuclear weapon activities, including any support to private entities involved in nuclear weapon activities, except those activities necessary for the implementation of the treaty and in meeting stockpile elimination obligations or on providing special fissionable material to any States that do not apply IAEA comprehensive safeguards
9. Assistance, encouragement and inducement in prohibited acts	Prohibitions on assisting, encouraging or inducing, directly or indirectly, any activity prohibited by the treaty
10. Victims and the environment	Recognition of the rights of victims of the use and testing of nuclear weapons and a commitmen. to provide assistance to victims and to environmental remediation
11. Declarations	Declarations of the existence in their arsenals and stockpiles of all nuclear weapons, nuclear material, nuclear facilities and nuclear weapon delivery vehicles they possess or control and their locations
12. Phases for elimination	A specific sequence of phases for the elimination of nuclear weapons were identified: (a) taking nuclear weapons off alert; (b) removing weapons from deployment; (c) removing nuclear warheads from their delivery vehicles; (d) removing and disfiguring the "pits"; and (e) placing the fissile material under international control
	Obligations to eliminate nuclear arsenals within an agreed time frame and in a specified manner could be included

Element	*Details*
13 Verification	Verification arrangements, including routine and challenge inspections, as well as measures for the use of on-site sensors, satellite photography, radionuclide sampling and other remote sensors, information sharing with other organizations and citizen reporting
	Establishment of an international monitoring system and making information available through a registry
14. Rights and obligations of individuals	Rights and obligations for individuals, including national legislation to criminalize support for activities proscribed under the convention and protections for individuals reporting such activities, including the right of asylum
15. Compliance and secretariat	Establishment of an international agency responsible for verification and ensuring compliance, comprising a conference of States parties, an executive council and a technical secretariat, or giving IAEA an active role in verifying nuclear disarmament
	The secretariat shall be responsible for the holding of periodic or extraordinary consultations among Member States on matters relating to the purposes, measures and procedures set out in the instrument
16. Dispute settlement	Dispute settlement, including provisions for consultation, cooperation, fact-finding and other measures to clarify and resolve implementation issues, including the possibility of referring a dispute to the International Court of Justice and, if required, referring a situation to the Security Council
	Provision of a series of graduated responses for non-compliance and, if required, sanctions or recourse to the General Assembly and the Security Council for action
17. National implementation measures	Requirement for States parties to adopt necessary legislative measures to implement their obligations under the convention and to establish a national authority responsible for national implementation
18. Optional protocol concerning energy assistance	Nothing should affect the inalienable right of all the parties to any instrument to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with their relevant international obligations: an optional protocol establishing a programme of energy assistance could be included
19. Cooperation and assistance to meet the obligations of the treaty	Provision of a framework for international cooperation and technical assistance to work towards meeting obligations
20. Relation with other international agreements	Possibility of adding functions and activities of existing nuclear non-proliferation and disarmament regimes and verification and compliance arrangements, as well as establishing additional complementary arrangements
21. Military cooperation	Requirement not to participate in any act prohibited and in doctrines based on nuclear deterrence, and ensuring that participation in an alliance with a nuclear-armed State is compatible with the commitments and policies under the instruments

Annex III

List of documents submitted by the Chair, Member States, international organizations, institutions and non-governmental organizations

Symbol	*Title*
A/AC.286/1	Provisional agenda: submitted by the Chair-designate
A/AC.286/2	Synthesis paper: submitted by the Chair
A/AC.286/WP.1/Rev.1	Revised indicative timetable: submitted by the Chair-designate
A/AC.286/WP.2/Rev.1	Panel I on substantively addressing concrete effective legal measures, legal provisions and norms that will need to be concluded to attain and maintain a world without nuclear weapons: submitted by the Chair-designate
A/AC.286/WP.3/Rev.1	Panel II on substantively addressing recommendations on other measures that could contribute to taking forward multilateral nuclear disarmament negotiations, including but not limited to: (a) transparency measures related to the risks associated with existing nuclear weapons; (b) measures to reduce and eliminate the risk of accidental, mistaken, unauthorized or intentional nuclear weapon detonations; and (c) additional measures to increase awareness and understanding of the complexity of and interrelationship between the wide range of humanitarian consequences that would result from any nuclear detonation: submitted by the Chair-designate
A/AC.286/WP.4	Nuclear weapons and security: A humanitarian perspective: submitted by Austria
A/AC.286/WP.5	The "legal gap", the Treaty on the Non-Proliferation of Nuclear Weapons and different approaches on taking forward nuclear disarmament negotiations: submitted by Austria
A/AC.286/WP.6/Rev.1	Position paper on nuclear disarmament by the Community of Latin American and Caribbean States: submitted by the Dominican Republic in its capacity as President pro tempore of the Community
A/AC.286/WP.7	Views and recommendations with regard to issues related to taking forward multilateral nuclear disarmament negotiations: submitted by the Islamic Republic of Iran
A/AC.286/WP.8	Empirical analysis of pathways for taking forward multilateral nuclear disarmament negotiation: submitted by Costa Rica and Malaysia
A/AC.286/WP.9/Rev.2	A progressive approach to a world free of nuclear weapons: revisiting the building blocks paradigm: submitted by Australia, Belgium, Bulgaria, Canada, Croatia, Estonia, Finland, Germany, Greece, Hungary, Italy, Japan, Latvia, Lithuania, Netherlands, Norway, Poland, Portugal, Republic of Korea, Romania, Slovakia, Slovenia, Spain and Turkey

Symbol	*Title*
A/AC.286/WP.10	Consolidated answers to the guiding questions submitted by Panel I on substantively addressing concrete effective legal measures, legal provisions and norms that will need to be concluded to attain and maintain a world without nuclear weapons: submitted by Brazil
A/AC.286/WP.11	Model nuclear weapons convention: submitted by Costa Rica and Malaysia
A/AC.286/WP.12*	Propuesta de acciones prácticas para lograr el desarme nuclear: presentado por Cuba
A/AC.286/WP.13	Developing and strengthening norms for attaining and maintaining a world without nuclear weapons: submitted by Costa Rica and Malaysia
A/AC.286/WP.14	Elements for a treaty banning nuclear weapons: submitted by Fiji, Nauru, Palau, Samoa and Tuvalu
A/AC.286/WP.15	Proposal by the Community of Latin American and Caribbean states on effective legal measures to attain and maintain a world without nuclear weapons: submitted by the Dominican Republic in its capacity of President pro tempore of the Community
A/AC.286/WP.16	The existence of a legal gap: submitted by the Netherlands
A/AC.286/WP.17	A legally binding instrument that will need to be concluded to attain and maintain a world without nuclear weapons: a prohibition on nuclear weapons: submitted by Mexico
A/AC.286/WP.18	De-alerting: submitted by Chile, Malaysia, Nigeria, New Zealand, Sweden and Switzerland (the De-alerting Group)
A/AC.286/WP.19	Measures to reduce and eliminate the risk of accidental, mistaken, unauthorized or intentional nuclear weapon detonations: submitted by Iraq
A/AC.286/WP.20/Rev.1	Is there a "Legal Gap for the elimination and prohibition of nuclear weapons"?: submitted by Canada
A/AC.286/WP.21/Rev.1	Revised indicative timetable — 2 to 13 May 2016: submitted by the Chair
A/AC.286/WP.22	Effective measures towards a world free of nuclear weapons: submitted by Japan
A/AC.286/WP.23	Issues and challenges in actual reduction and elimination of nuclear weapons: submitted by Japan
A/AC.286/WP.24	Comprehensive Nuclear-Test-Ban Treaty: effective measures to facilitate establishing the norm against nuclear testing: submitted by Japan and Kazakhstan

* Unofficial English translation made available after the issuance of the original text.

A/AC.286/WP.25/Rev.1	The road to zero: the progressive approach: submitted by Belgium, Canada, Germany, Italy, Latvia, Netherlands, Poland and the Republic of Korea
A/AC.286/WP.26/Rev.1	Security assurances: submitted by Belgium, Canada, Germany, Netherlands, Poland, Spain and Sweden
A/AC.286/WP.27/Rev.1*	La prohibición de las armas nucleares: preguntas relacionadas con su ámbito de aplicación y cumplimento: presentado por Nicaragua
A/AC.286/WP.28	Panel I on measures to reduce and eliminate the risk of accidental, mistaken, unauthorized or intentional nuclear weapon detonations: submitted by the Chair
A/AC.286/WP.29	Panel II on transparency measures related to the risks associated with existing nuclear weapons: submitted by the Chair
A/AC.286/WP.30	Panel III on additional measures to increase awareness and understanding of the complexity of and interrelationship between the wide range of humanitarian consequences that would result from any nuclear detonation: submitted by the Chair
A/AC.286/WP.31	Panel IV on essential elements that could form part of effective legal measures, legal provisions and norms that will need to be concluded to attain and maintain a world without nuclear weapons: submitted by the Chair
A/AC.286/WP.32	Panel V on possible pathways to take forward multilateral nuclear disarmament negotiations: submitted by the Chair
A/AC.286/WP.33	Panel VI on other measures that could contribute to taking forward multilateral nuclear disarmament negotiations: submitted by the Chair
A/AC.286/WP.34/Rev.1	Addressing nuclear disarmament: recommendations from the perspective of nuclear-weapon-free zones: submitted by Argentina, Brazil, Costa Rica, Ecuador, Guatemala, Indonesia, Malaysia, Mexico and Zambia
A/AC.286/WP.35	Nuclear disarmament in context — a global governance issue: submitted by Ireland
A/AC.286/WP.36	The "legal gap": recommendations to the Open-ended Working Group on taking forward nuclear disarmament negotiations: submitted by Afghanistan, Algeria, Andorra, Angola, Antigua and Barbuda, Argentina, Austria, Bahamas, Bahrain, Barbados, Belize, Benin, Bolivia (Plurinational State of), Botswana, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cabo Verde, Cambodia, Central African Republic, Chad, Chile, Colombia, Comoros, Congo, Cook Islands, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Eritrea, Ethiopia, Fiji, Gambia, Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Indonesia, Iraq, Ireland, Islamic Republic of Iran, Jamaica, Jordan, Kazakhstan, Kenya, Kiribati, Kuwait, Kyrgyzstan, Lebanon, Lesotho,

	Liberia, Libya, Liechtenstein, Madagascar, Malawi, Malaysia, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Mongolia, Namibia, Nauru, Nicaragua, Niger, Nigeria, Oman, Niue, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia, Seychelles, Sierra Leone, Singapore, Somalia, South Africa, Sri Lanka, Sudan, Suriname, Swaziland, Tajikistan, the former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Trinidad and Tobago, Tunisia, Tuvalu, Uganda, United Arab Emirates, United Republic of Tanzania, Uruguay, Vanuatu, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zambia, Zimbabwe and State of Palestine
A/AC.286/WP.37	Effective measures, legal norms and provisions on nuclear weapons: a hybrid approach towards nuclear disarmament: submitted by Brazil
A/AC.286/WP.38/Rev.1	Imperatives for arms control and disarmament: submitted by Australia, Canada, Germany, Italy, Latvia, Netherlands, Poland, Republic of Korea, Slovakia and Spain
A/AC.286/WP.39	Nuclear armed cruise missiles: submitted by Sweden and Switzerland
A/AC.286/WP.40	Treaty of Tlatelolco: a disarmament instrument: submitted by Argentina in its capacity as coordinator of the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean
A/AC.286/NGO/1	Taking control: how non-nuclear-weapon States can take forward multilateral nuclear disarmament negotiations: submitted by Wildfire
A/AC.286/NGO/2	Filling the legal gap for the prohibition of nuclear weapons: submitted by Article 36 and the Women's International League for Peace and Freedom
A/AC.286/NGO/3	A treaty banning nuclear weapons: submitted by Article 36 and the Women's International League for Peace and Freedom
A/AC.286/NGO/4	The role of nuclear alliance States in taking forward multilateral nuclear disarmament negotiations: submitted by Wildfire
A/AC.286/NGO/5	Quest of legal measures with specificity and feasibility for nuclear disarmament: submitted by Peace Depot Inc.
A/AC.286/NGO/6	Obligation and opportunity: negotiations in good faith: submitted by the World Council of Churches
A/AC.286/NGO/7	Building the framework for a nuclear-weapon-free world: submitted by the Basel Peace Office
A/AC.286/NGO/8	Increasing transparency, reducing risk and raising awareness: the role of non-nuclear-weapon States: submitted by Grupo de Práticas em Direitos Humanos e Direito Internacional
A/AC.286/NGO/9	Open letter: submitted by Mayors for Peace

A/AC.286/NGO/10	Towards a United Nations agency that will include the mandate to educate the global public on the treaty banning nuclear weapons: submitted by Center for Peace Education, Miriam College, the Philippines
A/AC.286/NGO/11/Rev.1	Respond realistically to the critical moment: submitted by the Global Security Institute
A/AC.286/NGO/12	A legal instrument for the prohibition and elimination of nuclear weapons: submitted by the International Association of Lawyers Against Nuclear Arms
A/AC.286/NGO/13	Nuclear risks: submitted by the People for Nuclear Disarmament/ Human Survival Project
A/AC.286/NGO/14	Closing our wallets to nuclear weapons: the necessity of including explicit language on financing in a nuclear weapons prohibition treaty or framework of agreements: submitted by PAX
A/AC.286/NGO/15	Measures for States relying on, but not possessing nuclear weapons, to take forward multilateral nuclear disarmament negotiations: submitted by PAX
A/AC.286/NGO/16	Different elements for the interoperability and nuclear ban discussion: submitted by the Human Security Network in Latin America and the Caribbean Region
A/AC.286/NGO/17/Rev.1	Nuclear weapons and human security: submitted by Soka Gakkai International
A/AC.286/NGO/18	The health and humanitarian case for banning and eliminating nuclear weapons: submitted by the International Council of Nurses, the International Physicians for the Prevention of Nuclear War, the World Federation of Public Health Associations and the World Medical Association
A/AC.286/NGO/19	Progress in multilateral nuclear disarmament requires a treaty prohibiting the possession, threat or use of nuclear weapons: submitted by Los Alamos Study Group
A/AC.286/NGO/20	Options for a framework agreement: submitted by the Middle Powers Initiative
A/AC.286/NGO/21	Nuclear disarmament summits: building political traction for the adoption and implementation of legal measures and norms: submitted by Middle Powers Initiative
A/AC.286/NGO/22/Rev.1	Security and humanitarian implications of relying on nuclear weapons for deterrence, and effective alternatives: submitted by Acronym Institute for Disarmament Diplomacy
A/AC.286/NGO/23	Options for moving forward on disarmament: submitted by the Arms Control Association

A/AC.286/NGO/24	Three measures to contribute to the achievement of a nuclear-weapon-free world: submitted by the group of non-governmental experts from countries belonging to the New Agenda Coalition
A/AC.286/NGO/25	The contribution of domestic policies to advancing multilateral nuclear disarmament: submitted by the World Future Council
A/AC.286/NGO/26	Youth: a necessary stakeholder in nuclear disarmament processes: submitted by Amplify — generation of change
A/AC.286/NGO/27	Measures to confront growing risks of catastrophic nuclear weapons use: submitted by Global Zero
A/AC.286/NGO/28	The right to survive, the right for peoples to determine their own survival, and the referendum as a means of abolishing nuclear weapons: submitted by Action des Citoyens pour le Désarmement Nucléaire
A/AC.286/NGO/29	Open letter to support the work of the Open-ended working group: submitted by Mayors for Peace
A/AC.286/NGO/30/Rev.1	Building the framework for a nuclear-weapon-free world: submitted by the Basel Peace Office
A/AC.286/NGO/31	Échapper au double jeu du Traité sur la non-prolifération des armes nucléaires : presenté par l'Action des Citoyens pour le Désarmement Nucléaire*
A/AC.286/MISC.1/Rev.1	Disarmament and non-proliferation education: submitted by the James Martin Center for Non-proliferation Studies at the Monterey Institute of International Studies
A/AC.286/MISC.2	Accelerating global nuclear disarmament: a menu of 16 policy options: submitted by the Netherlands Institute of International Relations "Clingendael"
A/AC.286/MISC.3	Non-nuclear-weapon States and a treaty prohibiting nuclear weapons: submitted by the Institute of International Studies, Universitas Gadjah Mada
A/AC.286/L.1	Draft report of the Open-ended Working Group taking forward multilateral nuclear disarmament negotiations

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Extrajudicial, summary or arbitrary executions

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, submitted in accordance with Assembly resolution 69/182.

* A/71/150.

** The present document was submitted late to allow comments from a final round of consultations to be incorporated.

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Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions

Summary

In the present report, the outgoing Special Rapporteur, Christof Heyns, provides an overview of his activities since the submission of his previous report, and offers a review of some of the subjects considered over the six years of his mandate.

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I. Introduction

1. The outgoing mandate holder, Christof Heyns, held the position of Special Rapporteur from 1 August 2010 to 31 July 2016. In the present report — his last to the General Assembly — he provides an update on some of the areas covered during that period, and comments on some of the current issues in the area of the right to life. The report begins with an overview of the activities of the Special Rapporteur since the submission of his previous report to the General Assembly (A/70/304).

II. Activities of the Special Rapporteur

2. The activities carried out by the Special Rapporteur from 14 July 2015 to 14 April 2016 are outlined in his report to the Human Rights Council at its thirty-second session (A/HRC/32/39). In the thematic section of that report, the Special Rapporteur focused on the use of force by private security providers in law enforcement contexts.

A. International and national meetings

3. From 3 to 4 May 2016, the Special Rapporteur participated in the third Glion Human Rights Dialogue, entitled "Human rights implementation and compliance: turning international norms into local reality", hosted by the Governments of Norway and Switzerland, and held in Glion, Switzerland.

4. From 11 to 13 May, he co-chaired the Expert Seminar on the Right to Life, in collaboration with the Geneva Academy of International Humanitarian Law and Human Rights and the Institute for International and Comparative Law in Africa of the University of Pretoria, held in Geneva.

5. On 1 June, he was the keynote speaker at the Human Rights Awards Dinner, held by the Advocates for Human Rights in Minneapolis, United States of America.

6. From 6 to 10 June, he participated in the twenty-third annual meeting of special procedures mandate holders, held in Geneva.

7. On 20 June, he presented his final annual report (A/HRC/32/39) to the Human Rights Council at its thirty-second session.

8. On 20 June, he organized and moderated a side event on "Private security: Precaution and accountability for the use of force" in Geneva.

9. On 20 June, he participated in a side event on "The human rights situation in Ukraine two years after Euromaidan: a view from civil society" organized by The Human Rights House Foundation in Geneva.

10. On 21 June, he held a press conference in Geneva, to present his annual report to the Human Rights Council.

11. From 11 to 29 July he presented a seminar on the right to life in the Master's in International Human Rights Law programme of the University of Oxford.

B. Visits

12. The Special Rapporteur visited Honduras from 23 to 27 May 2016. His report on that country visit will be submitted to the thirty-fifth session of the Human Rights Council.

13. From 13 to 17 June 2016, the Special Rapporteur visited Burundi as a member and chair of the United Nations Independent Investigation on Burundi, pursuant to Human Rights Council resolution S-24/1, adopted on 17 December 2015.

14. Since his previous report to the General Assembly, the Special Rapporteur has sent requests for visits to the Governments of Burundi, Israel, Mozambique and the State of Palestine. The Special Rapporteur thanks the Governments of Burundi, Iraq, Honduras, Mozambique, Nigeria and the State of Palestine, which have responded positively to his requests, and encourages the Governments of Egypt, Eritrea, the Islamic Republic of Iran, Israel, Pakistan, Rwanda and Sri Lanka to accept his pending requests for visits.

III. Overview

15. When the Special Rapporteur presented his final report to the Human Rights Council in June 2016, he was asked by several States to reflect upon his tenure and the role of the mandate holder. In the present report he takes stock of and provides updates on some of the issues he addressed and focuses on some of the challenges and opportunities in the areas covered by the mandate.[1]

16. Holding the mandate provides a singular opportunity to engage with the development of international law at the cutting edge, but also to try to make a direct difference to the lives of people. The Special Rapporteur wants to express his heartfelt gratitude for having been given this opportunity and to thank those who have worked with him.[2]

A. Scope and subjects

17. The normative core of the mandate — made clear through the various resolutions and practice of the General Assembly and the Human Rights Council (most recently in Assembly resolution 69/182 and Human Rights Council resolution 26/12), and through the thematic prioritics of previous mandate holders — is to be found in the right to life, as articulated for example in article 6 of the International Covenant on Civil and Political Rights. The mandate was originally directed primarily at political killings.[3] However, it has since then been interpreted to cover a

[1] See www.ohchr.org/EN/Issues/Executions/Pages/SRExecutionsIndex.aspx and www.icla.up.ac.za/un.

[2] This includes a wide range of people in the Office of the United Nations High Commissioner for Human Rights (OHCHR). Outside the office the Rapporteur wants to thank in particular Thomas Probert, Stu Maslen and Sarah Knuckey. He is grateful to the University of Pretoria for providing an enabling institutional base.

[3] See resolution 35/172 on arbitrary or summary executions, in which the General Assembly was concerned at the occurrence of executions which are widely regarded as being politically motivated.

much wider range of deprivations of life (see E/CN.4/2002/74, para. 8). The central concern of the mandate remains "executions": the use of lethal force by one human being against another.

18. The right not to be arbitrarily deprived of life is a foundational and universally recognized right, applicable at all times and in all circumstances. It has been called the "supreme right".[4]

19. There are two dimensions of the right to life: prevention (the substantive) and accountability (the procedural). States must prevent the "arbitrary" deprivation of life, including through an appropriate framework of laws. States must respect the right to life by ensuring that their organs and agents, and others whose conduct can be attributed to the State, do not deprive any person of life arbitrarily. They must also protect and fulfil the right to life by exercising due diligence to prevent arbitrary deprivations of life by private actors, as well as take reasonable measures to address conditions that may give rise to direct threats to life, including those caused by pollution or resulting from natural causes.[5] The right to life is not an absolute right, but it can be limited only under circumstances that are narrowly defined by international human rights law.

20. The accountability component of the right to life requires that States must investigate potentially unlawful deaths, assign responsibility and remedy violations. An emphasis on the accountability component was a central preoccupation during the tenure of the outgoing Special Rapporteur. This stemmed partly from the view that what distinguishes all human rights from mere aspirations is that violations of human rights are met with consequences, in the form of accountability. Moreover, the certainty of effective accountability is an important component of deterrence. This emphasis found its most concrete expression in the updating of the Manual on the Effective Prevention and Investigation of Extra-legal, Summary or Arbitrary Executions (the Minnesota Protocol), discussed below.

21. A further element of the Special Rapporteur's approach was to emphasize that the right to life is not merely a right to continued physical existence, or "bare life",[6] but rather that what is protected is dignified life. This found expression in particular in his work on autonomous weapons, discussed below.

22. The Special Rapporteur has also described what he has called the "protect life" principle as an important lodestar for the international protection of the right to life and thus for the mandate. As a general rule, the deprivation of life cannot be justified on any other basis than that it is required to save life. This is a minimum requirement and applies in particular to the intentional deprivation of life. Limitations on the right to life cannot be justified on the grounds that they are required in order to pursue objectives such as asserting the authority of the State, protecting property or imposing moral or religious values.

23. The mandate is focused on the protection of the right to life, and not on violence reduction in general. At the same time, it is clear that one way to protect life is through evidence-based programmes aimed at violence reduction. The Special

[4] Human Rights Committee, general comment No. 6 (1982) on article 6 (Right to Life), para. 1.

[5] See, for example, European Court of Human Rights, *Öneryıldız v. Turkey*, application No. 48939/99, (Grand Chamber) judgement of 30 November 2004.

[6] Giorgio Agamben *Homo Sacer: Sovereign Power and Bare Life* (Stanford, Stanford University Press, 1998).

Rapporteur has emphasized the need for all players to take note of the emergence of a body of scholarship contending that there has been a significant reduction in interpersonal violence over the last several centuries in the world as whole.[7] This suggests that violence is not as endemic or as intractable as it is often presented, and creative new steps can and must be found to protect the right to life, including through technology.

B. Working methods

24. The main working methods of the Special Rapporteur remain thematic reports, country visits and communication with States.

25. During his tenure the Special Rapporteur presented thematic reports on the following issues:[8] the death penalty (A/67/275, A/69/265 and A/70/304); remotely piloted aircraft or "armed drones" (A/68/382 and A/HRC/26/36) autonomous weapons (A/HRC/23/47, A/HRC/26/36 and A/69/265); the protection of the right to life during law enforcement operations (A/66/330, A/HRC/17/28, A/HRC/26/36, A/HRC/17/28 and A/69/265), including the use of force by private security providers in that context (A/HRC/32/39); the protection of journalists (A/HRC/20/22), the role of forensic investigations (A/70/304) and information and communications technologies (A/HRC/29/37); the role of regional human rights systems (A/69/265) and the use of statistical indicators (A/69/265).

26. He visited the following countries: India (see A/HRC/23/47/Add.1), Turkey (see A/HRC/23/47/Add.2), Mexico (see A/HRC/26/36/Add.1), the Gambia (see A/HRC/29/37/Add.2), Papua New Guinea (see A/HRC/29/37/Add.1), Ukraine (see A/HRC/32/39/Add.1), and Honduras (report to be presented at the thirty-fifth session of the Council). As part of the United Nations Independent Investigation on Burundi he also conducted two visits to Burundi.

27. He authored or co-authored 753 communications to States. In 47 per cent of cases, some form of State response (ranging from mere acknowledgements of receipt to substantive comments) was received.[9]

28. As will be highlighted below, the Special Rapporteur had a strong focus on working with the established and emerging regional human rights mechanisms. This was done especially in the context of the broader initiative of the United Nations special procedures of the Human Rights Council to work with the African Commission on Human and People's Rights, in terms of the Addis Ababa road map.[10] The Special Rapporteur chaired the joint working group associated with that

[7] See, for example, Steven Pinker, *The Better Angels of Our Nature: The Decline of Violence in History and its Causes* (London, Allen Lane, 2011); and Manuel Eisner "Long-Term Historical Trends in Violent Crime" *Crime and Justice: A Review of Research, vol. 30* (2003).

[8] Preliminary discussion papers were often presented to expert gatherings before finalizing thematic reports (sometimes jointly with other rapporteurs). This allowed broad input into the reports.

[9] A full analysis can be found in the Rapporteur's annual communications report (most recently, A/HRC/32/39/Add.3).

[10] See OHCHR, "Dialogue between special procedures mandate-holders of the United Nations Human Rights Council and the African Commission on Human and Peoples' Rights: road map", January 2012. Available from www.ohchr.org/Documents/HRBodies/SP/SP_UNHRC_ACHPRRoad%20Map.pdf.

initiative. He also submitted amicus curiae briefs in several cases at the domestic and regional (African and Inter-American) levels.

C. Recent developments in the normative environment of the right to life

29. Several recent developments have shaped and will continue to shape the global understanding of the right to life and thus the mandate. The Special Rapporteur is glad to have been able to contribute to a number of them in one way or another.

30. The Human Rights Committee is developing a new general comment on the right to life. The Committee's general comment No. 6 on article 6 (right to life) (1982) was written in the early 1980s, and the new draft text considerably expands upon it, bringing it up to date with the subsequent jurisprudence of the Committee.[11]

31. The Special Rapporteur, in collaboration with the Office of the United Nations High Commissioner for Human Rights, initiated an expert process in 2014 to update the Minnesota Protocol. This is in essence a restatement and consolidation of the standards applicable to the investigation of all potentially unlawful deaths — the procedural component of the right to life mentioned above.

32. A number of bodies are involved in exploring whether new laws are needed in the context of the use of armed drones and autonomous weapons, during armed conflict as well as law enforcement operations.[12]

33. In 2014 the Human Rights Council commissioned a study on the proper management of assemblies (see Council resolution 25/38). The outcome of that study (A/HRC/31/66) was presented to the Council in March 2016.

34. The United Nations Office on Drugs and Crime (UNODC) and the United Nations High Commissioner for Human Rights are developing a handbook on Use of Force and Firearms in Law Enforcement (expected in late 2016).

35. The inclusion of the aim to significantly reduce all forms of violence in the world as target 1 of Goal 16 of the Sustainable Development Goals will focus attention on the ability of States to address violence across societies.

36. The most prominent regional engagement with the issue was when the African Commission on Human and Peoples' Rights adopted its general comment No. 3 on the African Charter on Human and Peoples' Rights: the right to life in November 2015.[13]

37. The Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe recently produced a Human Rights

[11] A description of the process of consultation is available from www.ohchr.org/EN/HRBodies/CCPR/Pages/GC36-Article6Righttolife.aspx.

[12] The issue of autonomous weapons has been taken up inter alia by the States parties to the Convention on Certain Conventional Weapons and will be considered again during their meeting in December 2016. See also International Committee of the Red Cross (ICRC), "Autonomous weapons: decisions to kill and destroy are a human responsibility", 11 April 2016. Available from https://www.icrc.org/en/document/statement-icrc-lethal-autonomous-weapons-systems.

[13] African Commission on Human and Peoples' Rights, *General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4)* (Pretoria University Law Press, 2015).

Handbook on Policing Assemblies.[14] The Intergovernmental Commission on Human Rights of the Association of Southeast Asian Nations (ASEAN) has decided to embark on a study on the right to life.

IV. Thematic issues

A. Progressive abolition of the death penalty

38. The death penalty falls within the scope of the Special Rapporteur's mandate because the imposition of the death penalty in violation of international law standards constitutes an arbitrary deprivation of life.

39. Article 6 (2) of the International Covenant on Civil and Political Rights, by requiring that States that still apply the death penalty do so only for the most serious crimes, has long been understood to provide a foothold for the death penalty in extreme cases. That foothold, however, has shrunk over the years. The category of most serious crimes is now understood to cover at most intentional killing — murder (see A/67/275, para. 35). The Special Rapporteur has promoted the view that it is no longer tenable to describe international law as "retentionist", but instead that it requires the progressive abolition of the death penalty.[15]

40. Moreover, there is a growing view that the death penalty constitutes torture, cruel or inhuman treatment (prohibited in article 7 of the International Covenant on Civil and Political Rights) and violates the right to dignity (see A/67/279, para. 36). Article 6 (6) of the Covenant provides that nothing in article 6 shall be invoked to delay or to prevent the abolition of capital punishment by any State Party. The fact that the death penalty may have a foothold in article 6 (2), dealing with the right to life, may thus not serve as an argument against the contention that it constitutes a violation of those other rights.

41. The practice of the vast majority of States has been to move away from the death penalty, if not in law (although more than half have done so), then at least in practice (80 per cent have now abolished it in law or in practice). Whereas retentionist States could in the past have argued that there was strong State practice to justify the use of the death penalty as a limitation on the right to life, that argument has largely lost its force. It should be noted that three States alone were responsible for 89 per cent of the executions documented in 2015 (excluding China, from which reliable figures are not available).

42. The Special Rapporteur is of the view that the point has been reached where the death penalty can no longer be regarded as compatible with the prohibition of cruel, inhuman or degrading treatment. Even if that is not yet the case, authorities with decision-making power concerning the death penalty should recognize that the world is moving in that direction, requiring at least the progressive abolition of the death penalty. That was the approach followed by the African Commission on Human and Peoples' Rights in its recent general comment on the right to life.

[14] Organization for Security and Cooperation in Europe, *Human Rights Handbook on Policing Assemblies* (Warsaw, 2016).

[15] See Christof Heyns and Thomas Probert "The right to life and the progressive abolition of the death penalty" in *Moving Away From the Death Penalty: Argument, Trends and Perspectives* (United Nations publication, Sales No. E.15.XIV.6).

43. International law already allows only very limited space for the death penalty, prohibiting, for example, mandatory death sentences or the imposition of the death penalty on children. Ensuring that the legal system complies with all the relevant safeguards should not be incremental: that is an immediate obligation. However, at least incremental steps to further reduce the scope of the application of the death penalty are required. This would be the case, for example, where a State executes fewer people every year; reduces the number of "most serious" crimes for which the death penalty may be imposed; or implements a moratorium.

1. Resumptions

44. Against the backdrop of the progressively abolitionist logic of international human rights law, any resumption of the death penalty, or enlargement of its very narrow scope, is an issue of great concern (see A/69/265). Once they have abolished the death penalty, States are foreclosed by article 6 of the International Covenant on Civil and Political Rights from reinstating it. Article 6 provides the narrow foothold for the death penalty described above only for those States that have not abolished such punishment. Once a State has abolished the death penalty it no longer falls into that category (see CCPR/C/78/D/829/1998, para. 10.4).

45. In its general comment No. 6 (1982), the Human Rights Committee noted that all measures of abolition should be considered as progress in the enjoyment of the right to life. By implication, conversely, any resumption of executions or any measure increasing the use of the death penalty, leads to lesser protection of the right to life.

2. Drug crimes

46. Where the death penalty remains, it is vital that it be imposed only for the "most serious" crimes. The Human Rights Committee has repeatedly made clear that drug offences do not meet this threshold.

47. It is an issue of great concern that a small number of States choose persistently and openly to flout this widely acknowledged international standard. Thirty States around the world still have legal provisions providing for the death penalty for drug-related crimes. However, this theoretical possibility cannot serve as State practice justifying actual executions for drug-related offences in the much smaller number of States where they still take place. Likewise, nor does the large number of individual executions in the world for drug-related offences — estimated to be as many as 1,000 in certain years — translate into evidence of widespread State practice. Only a very small number of States — which is the relevant point of reference if State practice is to be established — undertake such executions.[16]

48. Technical assistance provided by States in combating drug crime, whether directly or via a multilateral agency such as UNODC, must begin with the assertion that the imposition of the death penalty for drug offences is a flagrant violation of international law.

[16] Patrick Gallahue and Rick Lines, *The Death Penalty for Drug Offences: Global Overview 2015* (London, International Harm Reduction Association, 2015).

3. Transparency

49. Transparency, or the public availability of information, is an underappreciated, yet crucial, aspect of securing the right to life under international law. In some States (such as Belarus, China and Viet Nam), information about the death penalty is a State secret; in others only very limited information is made available, often when it is too late. The coherence and integrity of the international human rights system is challenged when there are black holes in respect of which no information is available on the taking of lives (see A/HRC/30/18, para. 58).

B. Use of force in law enforcement

50. Every individual may use force to protect themselves or another person from threat of death or injury, and the State, in addition, has the obligation through its law enforcement officials to protect individuals and the general public from unlawful acts of violence. Law enforcement officials, more than ordinary members of the public, are thus entitled and indeed sometimes required to use force, but they must always do so in strict compliance with the applicable international standards. In the context of law enforcement, the requirements of necessity, proportionality and precaution are of particular importance.

51. The intentional lethal use of force by law enforcement officials and others is permissible in very exceptional cases only, namely when its use against a perpetrator is strictly unavoidable in order to protect human life from unlawful attack (making it proportionate) and all other means are insufficient to achieve that objective (making it necessary). The evaluation of necessity is a factual cause and effect assessment of whether the use of force is actually required to achieve the desired outcome (qualitative necessity) and, if so, how much force is unavoidable for that purpose (quantitative necessity). The requirement of necessity raises the question of whether the threat could not be averted by resort to less harmful means and thus requires a graduated approach to the use of force.

52. The proportionality requirement relates to the question of whether the benefit expected to result from the use of force, that is, neutralizing a threat, justifies the harm likely to be caused by it. While establishing necessity requires a factual cause-and-effect assessment, proportionality entails a value judgment that balances harm and benefit.

53. Given that they are cumulative requirements, proportionality can place a ceiling on the level of force that may be considered necessary and vice versa. For example, it may be "necessary" to shoot a fleeing thief if that is the only way to stop him or her from escaping (entailing an objective cause-and-effect assessment). However, thus injuring the thief would not be "proportionate", because it would amount to an excessively harmful means of stopping a comparatively minor crime (entailing a value judgment).

54. The State's use of potentially lethal force during peacetime must take place within a framework of appropriate planning and training, which must be directed at avoiding or minimizing the risk of loss of life during any law enforcement

operation.[17] It is not enough for a State or its agents to say that they had no choice but to use force if the escalation of that situation could reasonably have been avoided through precautionary measures. The Special Rapporteur has thus promoted the view that precaution should be seen as a separate requirement for the use of force, and in particular lethal force (see A/HRC/26/36, paras. 63-64).

55. Principle 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provides as follows:

> Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

56. The construction of the paragraph as a whole suggests that the intentional lethal use of firearms mentioned in the last sentence is permissible only if the danger is "imminent" — with imminence normally measured in seconds rather than hours. The kind of intention at stake here is what is often referred to as direct or indirect intent, but not the mere acceptance of a risk. The mere acceptance of a risk is covered by the first sentence of principle 9, which allows for firearms to be used for the protection of life or against serious injury. Where a grave threat is posed to life, the Basic Principles do not pose the requirement of imminence for firearms to be used, provided there is no (direct or indirect) intention to kill.[18]

1. Assemblies

57. Against the backdrop of the increasing use of demonstrations as a political tool worldwide over recent years and the loss of life during such events, the Special Rapporteur submitted two reports dealing with the management of demonstrations and the protection of the right to life (A/HRC/17/28 and A/HRC/31/66) to the Council. The management of demonstrations must be carried out in a holistic way. A whole range of rights applies to demonstrations, including the rights to peaceful assembly, freedom of expression and rights related to bodily security. These rights are indivisible and need to be protected as a whole for the right to life to be secured. Even if violence occurs during demonstrations, and individual participants have lost the protection of the right to peaceful assembly, the other rights still pertain. There is no such thing as an unprotected assembly.

58. It was set out above that precaution is an independent requirement for the use of force. The reports of the Special Rapporteur have elaborated on some of the precautionary steps necessary for the proper management of demonstrations, which can be one way of reducing the risk of an eventual confrontation.

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[17] See European Court of Human Rights, *McCann and Others v. United Kingdom* (application No. 18984/91, (Grand Chamber) judgment of 27 September 1995, paras. 150, 212 and 213, and *Finogenov and Others v. Russia*, (application Nos. 18299/03 and 27311/03, judgment of 20 December 2011, paras. 207-209 and 266.

[18] This interpretation of imminence clarifies that found in A/HRC/26/36, para. 59.

2. Less-lethal weapons

59. The requirement of necessity provides that, as far as possible, graduated force should be used.[19] In this context, less-lethal weapons may in some cases provide officials with less dangerous options than the use of firearms and thus may save lives. The duty of precaution requires that States equip their law enforcement officials with appropriate less-lethal weapons. However, while less-lethal weapons should, in general, be welcomed, it must be remembered that almost any use of force against the human person can lead to loss of life or serious injury.[20]

60. Just because a weapon is labelled "less-lethal" does not automatically mean that it is appropriate. An increasing number of detailed reports by human rights organizations document how protesters and bystanders have been wounded and sometimes died following the inappropriate use by police or security personnel of rubber-coated metal bullets, the reckless use of tear gas, electric shock projectiles, rubber ball projectiles, plastic bullets and water cannons.[21] As with all equipment used in law enforcement contexts, full training on each separate piece of equipment should be mandatory for any officers who might be called upon to use it.

61. While there is a high level of agreement on the international standards applicable to the use of force during law enforcement, the increasingly advanced technology requires a more detailed regulatory framework. A process involving States and the international community, in addition to civil society, is needed to set out how the standards established by the Basic Principles and other relevant jurisprudence should be applied to the scenarios created by new technology.[22]

3. Private security provision

62. Private security providers play a significant role in law enforcement in many parts of the world. The Special Rapporteur has underlined that the same precautionary principle applied to State law enforcement officials must also apply to private actors: those responsible for the use of force by any entity must ensure that personnel receive proper training, including firearms training if appropriate, but also — importantly — in "less-lethal techniques" (see A/HRC/32/39, para. 79).

63. With respect to the importance of redress and accountability at the domestic level, the Special Rapporteur noted that, given the inherent risks of abuse of rights associated with security work, close attention should be paid to the trigger of liability concerned (ibid., para. 115). It can be argued that private security providers should be held to a modified standard of strict liability, as might be expected from a company handling hazardous waste, for example.

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[19] See A/HRC/26/36, paras. 59, 69, 102 and 139; A/61/311, paras. 33-45; A/HRC/14/24, paras. 33-37; and A/68/382 and Corr.1, paras. 33-37.

[20] See, generally, Abi Dymond and Neil Corney, "The use of 'less lethal' weapons in law enforcement", in Stuart Casey-Maslen, ed., *Weapons Under International Human Rights Law* (Cambridge, Cambridge University Press, 2014).

[21] See Omega Research Foundation and Amnesty International, "*The human rights impact of less lethal weapons and other law enforcement equipment*" (London, 2015), Rohini J. Haar and Vincent Iacopino, "Lethal in disguise: the health consequences of crowd-control weapons" (Physicians for Human Rights and International Network of Civil Liberties Organizations, 2016).

[22] The Special Rapporteur recommended that OHCHR convene a panel to undertake such a process, firstly in A/69/265, para. 88, and then again in the joint report on the management of assemblies, A/HRC/31/66, para. 67 (i).

C. Role of new technology

64. The Special Rapporteur has throughout his mandate examined the increased impact of technological developments on the protection of the right to life. Technology, as a general rule, provides tools that can be used either to take life or to protect life.

1. Unmanned weapons systems

65. Depersonalization of the use of force has been or is being introduced through the two generations of unmanned systems, armed drones and fully autonomous weapons, in armed conflict and in law enforcement.

66. It is important that the Human Rights Council continues to engage with these developments, given their clear right-to-life implications. The mandate of the Council to address the right-to-life implications of weapons and armed conflict is now well established, although the important role of other United Nations bodies should also be recognized. These other bodies do not, however, play the same role with respect to domestic law enforcement, and if the Council does not deal with these weapon systems in that context, there will be a clear protection gap.

Armed drones

67. There is broad agreement that armed drones themselves are not illegal weapons. In many cases, however, they make it easier for States and other actors to use force and may thus present a real risk to the right to life. Legal standards should not be watered down to accommodate drones. Drones should follow the law, not the other way round.

68. It is of particular importance to maintain the distinction between situations of armed conflict and situations of law enforcement. The legal regime applicable to the latter (international human rights law) is more restrictive than that for the former (international human rights law and international humanitarian law). Whether force is used in the context of an armed conflict is a question of fact, and international humanitarian law applies only where the use of force relates to an armed conflict. Where that is not the case, the legality of the use of force against an individual is assessed by human rights law exclusively. International law does not provide that the law of self-defence in inter-State use of force can be a "stand-alone" basis for the use of force against an individual.

69. Deploying a missile from a drone against someone is invariably lethal if it hits the target. As a result, drones should be used in a context where international human rights law is the applicable legal regime (to the exclusion of international humanitarian law) only if it is necessary in order to save lives against a threat that is truly imminent, as required by the last sentence of principle 9 of the Basic Principles (see para. 55 above).

70. The central norms of international law need not, and should not, be abandoned to meet the challenges posed by terrorism. Indeed, the fact that drones make targeted killing so much easier should serve as a prompt to ensure diligent application of existing legal standards.

71. One of the most important ways to guard against the risks posed by drones is transparency about the factual as well as the legal situation pertaining to their use.

Transparency is a necessary step for legal accountability, mitigating abuse and democratic debate and oversight, by the population themselves as well as their representatives. The discrepancies between the figures for drone strikes recently released by the Government of the United States and civil society monitors provides a clear illustration of the uncertainty that exists regarding core facts about the drones programme, rendering proper public and other oversight of and accountability for a singularly intrusive method of using force in many cases impossible.

72. It is widely accepted that, during armed conflict, the meaning of the term "arbitrary" in human rights law is determined with reference to the requirements of international humanitarian law.[23] This approach has recently been called into question, however, with respect to a State which commits an act of aggression. The critical position does not challenge the fact that, in order to enhance the respect for international humanitarian law on all sides of an armed conflict, the privilege of belligerency, which shields a combatant from individual criminal responsibility whenever he or she takes the life of his or her adversary in conformity with the requirements of international humanitarian law, extends to those combatants who fight on the side of an aggressor State. However, it questions the notion that such an aggressor State itself deserves a corresponding privilege with respect to the international human right to life. Instead, it argues that the taking of enemy life by combatants of an aggressor State in the course of an act of aggression should be considered as a violation by that State of the right to life.[24]

73. The use of remote-controlled force in domestic policing, as raised by the Special Rapporteur in 2014 (see A/69/265) — has become a stark reality in recent years, for example when a sniper in Dallas was killed when a bomb was delivered and detonated by radio control.[25]

74. The use of military-style weapons in law enforcement in general should be questioned. Using such weapons implies that the citizens and the population at large are being treated as a threat. Using, for example, automatic firing mode in law enforcement operations does not comply with the requirement that every shot has to be separately justified. Using remote-controlled force during domestic policing, for example during the management of demonstrations, raises particular problems. The police have a duty to protect the public, and by using remote control they distance themselves from the public, and may not be able to fulfil this function.

Autonomous weapons

75. Some of the same concerns that apply to armed drones apply to autonomous weapons — weapon platforms that, once activated, can select and engage targets without further human intervention. However, they also raise additional concerns about the protection of life during war and peace. Because machine learning takes

[23] See International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*: Advisory Opinion of 8 July 1996, paras. 24-25.

[24] The Rapporteur discussed the law dealing with the inter-State use of force as a secondary level of protection of the right to life in 2013 with reference to armed drones (see A/68/382). See, more recently, Frédéric Mégret, "What is the specific evil of aggression?", in: Claus Kreß and Stefan Barriga, eds., *The Crime of Aggression: A Commentary* (Cambridge, Cambridge University Press, forthcoming).

[25] See www.theguardian.com/technology/2016/jul/08/police-bomb-robot-explosive-killed-suspect-dallas?CMP=Share_iOSApp_Other.

place and not all situations in armed conflict can be foreseen, there is an element of unpredictability in the selection of a target and the use of lethal force by autonomous weapons. They raise the question of to what extent such weapon platforms are still tools in the hands of human beings, or, conversely, allow robots to make life and death determinations over human beings.[26]

76. Autonomous weapons raise two distinct questions: can they carry out lawful targeting, and should they be permitted to carry out targeting of human beings?

77. The first question focuses on the interests of those who are protected from targeting — such as uninvolved civilians and those hors de combat. Will autonomous weapons be equipped to make the necessary distinctions, as well as the proportionality judgements required to ensure the protection of the right to life? In the case of advanced autonomy this may be seriously questioned. Moreover, reference was made above to the procedural component of the right to life, namely accountability. If there is a low level of human control, there may be a lack of legal accountability where targeting goes wrong, because accountability is premised on control.

78. There is also the question of whether autonomous weapons should make life-and-death determinations about humans. Here the primary concern is with the rights of those who may otherwise be targeted and are in that sense not protected. In order not to be "arbitrary", a deprivation of life may require a deliberative human decision. Killing by a machine may thus inherently be a violation of the right to life. It may furthermore also be a violation of human dignity, or of the right to a dignified life, if the determination that a human being will be killed is made by a robot, because it reduces the person to being a target (literally to the binary code of computing: the figures of 0s and 1s) and nothing more. Here the question is not legal but moral accountability: on whose conscience does the death of the person targeted lie when the killing is done by an algorithm?

79. In armed conflict there is often not an objectively right or wrong answer about targeting. Moreover, even if that were the case, the individual taking the decision is at most expected to act reasonably under the circumstances, given the available information. Where that turns out to be wrong there is no legal responsibility, but a certain moral responsibility remains, at least to make sure such an error does not occur again in the future. This will be lost if computers make targeting determinations.

80. In many of the discussions on the topic in which the Special Rapporteur has participated, the focus was on the use of autonomous targeting in single, isolated cases. However, what is at stake are rather the potential consequences of the deployment of such weapons over time, and the exponential effect of machine learning and of decreased control by human beings as a collective over decisions over life and death. Deciding to cross the threshold into a world in which this is accepted as standard practice is a momentous and probably irreversible decision.

81. In his report to the Human Rights Council at its twenty-third session (A/HRC/23/47), the Special Rapporteur called for a moratorium on the development of autonomous weapons, until a principled basis could be found to distinguish acceptable and autonomous weapons.

[26] See, generally, Nehal Bhuta and others, eds., *Autonomous Weapons Systems: Law, Ethics, Policy* (Cambridge, Cambridge University Press, 2016).

82. The concept of "meaningful human control" over critical functions (most saliently, the release of force) has subsequently been elaborated in the context, inter alia, of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects to fill this void. The Rapporteur supports the approach that weapons with full autonomy — those without meaningful human control — should be banned. They are unlikely to cross the first hurdle outlined above — the ability to make proper targeting decisions. They should moreover not make life-and-death determinations over human beings, because it would violate the right to a dignified life. The same constraints do not apply to autonomous weapons for which humans retain meaningful control.

83. In December 2016, the decision on how to take forward international work concerning autonomous weapons will again be on the agenda of the States parties to the Convention on the Use of Certain Conventional Weapons. The Rapporteur urges the Human Rights Council (and other human rights bodies) to follow the outcome of the decision closely. In addition, the Council should remain seized of the possible introduction of autonomous weapons in domestic law enforcement operations (see A/69/265, paras. 77-87).

2. Information and communications technologies and fact-finding

84. One advantage that can potentially be realized by the use of more technologically sophisticated weapons, as well as in other, non-weaponized, technological contexts, is the opportunity for greater availability of information and documentation. Drones capture and relay detailed sensory and video information so that remote pilots can fly them and allow accurate targeting. Such information can be very valuable in conducting post-operation assessments.

85. A related development is the emergence of the use of body-worn cameras, in both armed conflict and law enforcement settings, for different reasons. In both cases they have already proved a valuable evidentiary source for accountability for right-to-life violations.

86. More broadly, the emergence of a wide range of potential sources of information, enabled or created by information and communications technologies (ICTs), about violations presents a significant opportunity to human rights practitioners and for investigations concerning right-to-life violations.[27] Having recommended to the Office of the United Nations High Commissioner for Human Rights (OHCHR) in 2015 (see A/HRC/29/37) that it look into increasing its capacity to verify, analyse and act on information generated or received through ICTs, the Special Rapporteur welcomed the engagement of the Office in 2016 with questions of verification and digital safety as the "challenges" of the #DiploHack in Geneva, and looks forward to the implementation of some of the results.

D. Other killings incurring State responsibility

87. In his reports, and in engagements with States both during country visits and in communications, the Special Rapporteur has frequently taken up the issue of

[27] See, generally, Philip Alston and Sarah Knuckey, eds., *The Transformation of Human Rights Fact-Finding* (New York, Oxford University Press, 2016).

killings of individuals who find themselves in a situation of vulnerability either because of their work or because of events around them. The threats they face draw attention to the State's responsibility to protect as well as to respect the right to life, both through urgent preventive measures and, retrospectively, through investigation and accountability that combat a climate of impunity.

88. In most situations, the isolated killing of individuals will constitute a simple crime and not give rise to any State responsibility. Once a pattern becomes clear, however, and where the response of the State is inadequate, its responsibility under international human rights law becomes applicable (see E/CN.4/2005/7, paras. 71-75).

89. In this section, the Special Rapporteur addresses several patterns of killings that can be observed within certain societies. In addition to the general duty to protect, States moreover have a responsibility to protect from violence motivated by discriminatory prejudice, both directly and by taking steps to remedy the prejudice. It is in the sense of this separate responsibility that the State is made more proximate to killings of this nature than it is to ordinary criminal homicide.

90. Reference was made at the outset to the "protect life" principle. Under current-day international law, life may not be taken in order to protect interests other than life: suppressing free expression or political dissent, killing "witches", saving the "family honour", or imposing one's own concept of morality cannot justify the taking of life, and the perpetrators must be held accountable. A failure by the State to address systematic patterns of violence through precautionary measures (which should include education) opens it up to violations of the right to life, as does the absence of accountability measures where such violence does occur. Part of the task of the Special Rapporteur is to point out such patterns, to States and to the international community.

1. Journalists and human rights defenders

91. In 2012, the Special Rapporteur highlighted threats to the safety of journalists, noting the causal correlation between the killing of journalists and impunity for such attacks (see A/HRC/20/22).[28] That report appears to have provided support to the Human Rights Council to adopt a resolution on the safety of journalists later in 2012 (Council resolution 21/12). The following year, the General Assembly adopted a landmark resolution on the issue (Assembly resolution 68/163).

92. However, the increased international attention has not yet significantly impacted on the safety of journalists. In 2015, 73 journalists were killed in circumstances such that the Committee to Protect Journalists has confirmed that the motivation of the attack was their work, or that they were killed in crossfire.[29]

93. Many of the same risks and threats are faced by human rights defenders. Responding to such attacks, in the context of passivity or complicity on the part of law enforcement, is a frequent subject of the communications sent to States.

94. There is not yet a global level study of attacks or killings of human rights defenders similar to the records kept of journalists who are killed, but the numbers

[28] The Committee to Protect Journalists annual Impunity Index further underlines this trend. See https://cpj.org/reports/2015/10/impunity-index-getting-away-with-murder.php.

[29] See Committee to Protect Journalists, 73 journalists killed in 2015/motive confirmed database. Available from https://cpj.org/killed/2015/.

from certain national level studies are alarming. In a joint project with the Somos Defensores Programme, OHCHR registered 63 murders of human rights defenders in Colombia in 2015 (41 of which had been verified by the time they reported), a figure which they note as higher than the 20-year average of 33 human rights defenders killed each year (see A/HRC/31/3/Add.2, para. 79).

2. Witchcraft accusations and related violence

95. The killing of individuals, in the majority of cases women and children, for reasons related to various beliefs in witchcraft is a global issue that has been raised several times by the Special Rapporteur (see, for example, A/HRC/11/2 and A/HRC/29/37/Add.1). Responses to suspicions of "witchcraft" frequently involve serious and systematic forms of discrimination, especially on the grounds of gender, age and disability. Such arbitrary and subjective accusations result in very real terror and suffering, felt both by the individual victims and by their families.

96. Legal approaches at the national level vary, with some States still retaining archaic legal proscriptions of witchcraft. But more problematic, from the perspective of the Special Rapporteur, is the extent to which the law can be taken into private hands by mobs or individuals, while law enforcement officials can be reluctant to intervene.

97. In addition to violence against innocent people on the grounds that they are believed to be witches, there is an associated challenge of violence committed against innocent people on account of the belief that their body parts can be used by witchdoctors to create magic, which provides power and/or wealth to the client. This challenge is often manifested in attacks against persons with albinism, but can extend further.

98. States have a responsibility not only to investigate individual cases of such killings, but also, where a pattern is discernible, actively to discourage them, potentially through heightened sentencing, together with community-level advocacy and awareness-raising. It seems a sensible approach to say that, in witchcraft-related cases, the motive should be seen as an aggravating circumstance.

3. "Honour killings"

99. The issue of "honour killings" — the murder of an individual by a member or group of members of the same family or social group, motivated by the perception that the victim has brought dishonour upon the family or community — was raised by one of the Special Rapporteur's predecessors, Asma Jahangir (see E/CN.4/2000/3, paras. 78-84).

100. The perpetrators of such crimes are mostly male family members of the murdered women, who go unpunished or receive reduced sentences on the justification of having murdered to defend their misconceived notion of "family honour". Together with others, the Special Rapporteur can play a role by monitoring incidents of "honour killings" where the State either approves of and supports such acts, or extends a form of impunity to the perpetrators by giving tacit or covert support (ibid., para. 78).

4. Killings on the basis of sexual or gender identity

101. The Special Rapporteur welcomes the increasing attention paid to the issue of violence against persons on the basis of their actual or imputed sexual or gender identity. In 2015, the Special Rapporteur was glad to participate in an exchange between mechanisms of the African Commission on Human and Peoples' Rights, the Inter-American Commission on Human Rights and the United Nations concerning the issue.[30] In 2016, the Human Rights Council established a new mandate on protection against violence and discrimination against persons on the basis of their sexual orientation or gender identity (Human Rights Council resolution 32/2). Once more this brings to the fore the norm that life may not be taken in order to impose ethical values — and that, where that is done, there should be accountability.

102. In a small yet significant number of cases, States arbitrarily apply the death penalty very directly on the basis of sexual orientation. At least 10 States have laws allowing for such death sentences, a clear violation of international law in that the death sentence is imposed for a crime that should not even be a crime, let alone one that meets the threshold of "most serious". Even if the law is not in fact being applied, it inevitably has a significant "chilling effect" on lesbian, gay, bisexual and transgender communities in those countries.

103. But a problem in a far larger number of States is that of the State's failure to protect persons from violence on the basis of their real or imputed sexual or gender identity. Such failure can manifest itself in many ways, for example the failure of law enforcement officials to protect participants of a "Pride" parade from violence at the hands of counter-demonstrators or, alternatively, a failure properly to investigate attacks or punish perpetrators, thus contributing to a climate of impunity.

104. Whether or not, as in the first of the above two examples, there is a police officer on the scene who fails to act, attention should also be paid to the "normative environment" in which such attacks take place. This is central to understanding trends in their incidence, as well as appreciating the role that the State could — should — be playing in their reduction.

5. Migrants

105. The right to life of migrants has also been an issue placed high on the global agenda since the beginning of 2015. Concerns about use of force at borders or in temporary holding facilities (sometimes by private security contractors) are one dimension of the issue, although the standards are no different than for any other context.[31]

106. Issues of other loss of life are more complex, and will surely demand the attention of the Council and the next mandate holder over the coming years. Instances where a deliberate policy has impeded the flow of refugees, particularly where it denies them asylum and places them at mortal risk, appear to amount to a violation (for example, where closing a border leads to an accumulation of

[30] See www.ohchr.org/Documents/Issues/Discrimination/Endingviolence_ACHPR_IACHR_UN_SOGI_dialogue_EN.pdf.

[31] See, for example, "Asylum seekers abused in German shelter by security contractors", *Deutsche Welle*, 28 September 2014. Available from www.dw.com/en/asylum-seekers-abused-in-german-shelter-by-security-contractors/a-17960732.

internally displaced persons within a war zone that can then be targeted).[32] Equally important are questions about the responsibilities coastguard or other naval assets have to rescue migrants in distress on international waters.[33]

E. Use of statistics

107. In his report to the General Assembly in 2014 (A/69/265), the Special Rapporteur examined the role of statistics and the right to life. In that report, he highlighted the general reduction in the levels of homicide and other violent death around the world, but highlighted that certain regions and certain States continued to suffer from stubbornly high levels of violence.

108. The State has a responsibility to investigate all suspicious deaths and to pursue those responsible.[34] Documenting homicide statistics, and sharing those statistics with appropriate global monitoring bodies, represents an important dimension of accounting for life.

109. Reference was made above to the research conducted worldwide on violence reduction. In many cases this includes case studies aimed at determining the reasons why violence has reduced in a particular community during a specific period. This kind of research is vital to enable violence-stricken communities worldwide to analyse their own situations and to develop and implement measures to address the problem in their own specific contexts.

110. Continuing this research, especially in those areas of the world with the highest incidences of violence, including Latin America and Africa, should be a high priority for the scientific community, including local universities.[35] The duty to protect lives that lies with States, as well as the requirement of precaution, will require policymakers gradually to implement the findings of such research. Those monitoring the implementation of the right to life should engage with States that do not take measures to reduce violence. There should be active collaboration and interaction between those implementing Sustainable Development Goal 16 and those with responsibilities for the protection of the right to life.

F. Accountability and the role of investigations

111. The modern concept of human rights is premised on the approach that there are consequences for the violation of its norms — human rights standards are not merely preferences or aspirations. In line with this approach it has been a central tenet of the mandate that the protection of the right to life has two components: the prevention of arbitrary deprivations of life, and accountability should such

[32] See, for example, Gerry Simpson, "ISIS advance traps 165,000 Syrians at closed Turkish border", Human Rights Watch, 27 May 2016. Available from https://www.hrw.org/news/2016/05/27/dispatches-isis-advance-traps-165000-syrians-closed-turkish-border.

[33] See International Maritime Organization, Office of the United Nations High Commissioner for Refugees and the International Chamber of Shipping, *"Rescue at sea: a guide to principles and practice as applied to refugees and migrants"* (2015).

[34] European Court of Human Rights, *Opuz v. Turkey*, application No. 33401/02, judgement of 9 June 2009, para. 150.

[35] See, for example, the work of the *Observatorio de la Violencia* in Honduras, available from www.iudpas.org/observatorio.

deprivations occur. A lack of accountability is in itself a violation of the right to life. Accountability plays a central role in affirming the norm against arbitrary deprivations of life. It therefore also plays a vital preventive role. These two components thus create a self-reinforcing virtuous circle.

112. Accountability is a broad concept, which is not limited to the legal or other finding that a specific individual or institution is responsible for a particular instance of the taking of life, or to the sanctions imposed. Before such conclusions can be reached, an investigation into the events that transpired may be required. Investigations are thus an integral part of the concept of accountability.

1. Duty to investigate

113. The duty of the State to investigate is triggered where the State knows or should have known of any potentially unlawful death, including where reasonable allegations of a potentially unlawful death are made. The duty to investigate does not apply only where the State is in receipt of a formal complaint.[36]

114. The duty to investigate any potentially unlawful death includes all cases where the State has caused a death or where it is alleged or suspected that the State caused a death (for example, where law enforcement officers used force that may have contributed to the death). In all peacetime situations and all cases outside the conduct of hostilities during an armed conflict, this duty exists regardless of whether it is suspected or alleged that the death was unlawful.

115. The duty to investigate applies in relation to persons within the territory of a State or otherwise subject to its jurisdiction.[37] Where the duty to investigate applies, it applies to all States that may have contributed to the death or which have failed to protect the right to life.

116. The duty to investigate a potentially unlawful death applies generally during peacetime, situations of internal disturbances and tensions and armed conflict. Certain situations, such as armed conflict, may pose practical challenges for investigations.[38] Where context-specific constraints prevent full investigation, the constraints should be recorded and publicly explained.

117. Where there are reasonable grounds to suspect that a war crime was committed, the State must conduct a full investigation and prosecute those responsible.[39] Where, during the conduct of hostilities, any casualties have resulted

[36] European Court of Human Rights, *Ergi v. Turkey*, application No. 66/1997/850/1057, judgement of 28 July 1998, para. 82, and *Isayeva, Yusopva and Bazayeva v. Russia*, application Nos. 57947/00, 57948/00 and 57949/00, (Chamber) judgment of 24 February 2005, paras. 208 and 209; Inter-American Court of Human Rights. *Montero-Aranguren* et al. *v. Venezuela*, judgement, 5 July 2006, para. 79.

[37] See Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 10; African Commission on Human and Peoples' Rights, general comment No. 3. See also European Court of Human Rights, *Hassan v. United Kingdom*, application No. 29750/09, (Grand Chamber) judgement of 16 September 2014, para. 78.

[38] See, for example, European Court of Human Rights, *Jaloud v. The Netherlands*, application No. 47708/08, (Grand Chamber) judgement of 20 November 2014, para. 164.

[39] For a discussion of the duty to investigate violations of international humanitarian law, see ICRC, customary international humanitarian law, rule 158 (Prosecution of war crimes). See also the Geneva Conventions of 1949: Geneva I, art. 49; Geneva II, art. 50; Geneva III, art. 129; Geneva IV, art. 146; the 1977 Additional Protocol I, art. 85.

from an attack, a post-operation assessment should be conducted to establish the facts, including the accuracy of the targeting. In any event, where evidence of unlawful conduct is identified, a full investigation should be conducted.

2. Deaths in custody

118. Where a State agent has caused the death of a detainee or where a person has died in custody, this must be reported, without delay, to a judicial or other competent authority that is independent of the prison administration and mandated to conduct prompt, impartial, and effective investigations into the circumstances and causes of such cases.[40] This responsibility extends to persons detained in prisons, in other places of detention (official or otherwise), and to persons in other facilities where the State exercises heightened control over their lives. Owing to the control exercised by the State over those it holds in custody, there is, in general, a presumption of State responsibility in such cases (see A/61/311, paras. 49-54). Particular circumstances in which the State will be held responsible for the death, unless it is proven to the contrary, include, for example, situations where the person suffered injury while in custody or when the deceased was, prior to his death, a political opponent of the Government or a human rights defender, was known to be suffering from mental health issues, or committed suicide in unexplained circumstances. In any event, the State has the obligation to provide all relevant documentation to the family of the deceased, including the death certificate, medical report and reports on the investigation held into the circumstances surrounding the death (see CCPR/C/OP/2 at 112 (1990), para. 9.2).

3. Minnesota Protocol

119. The intersection of the mandate of the Special Rapporteur and the process of investigations, including their forensic element, is made clear in one of the documents central to the mandate, the Minnesota Protocol, discussed above. This remains a groundbreaking piece of work with significant impact. However, extensive consultation revealed a consensus that the time is ripe for revision.[41] As a key text providing guidance on the practical implementation of the duty to protect life and the obligation to investigate potentially unlawful deaths, its updating will ensure its continuing relevance over the coming decades.

120. The process of revision, undertaken by the Special Rapporteur in collaboration with OHCHR, has been marked by open and extensive consultations with experts from all regions and with diverse backgrounds. In both its old and in its new form, the Minnesota Protocol is thus an expert document which depends for its authority on the use that States and others have made and will continue to make of it, and the expertise of those involved in the process of updating it, in addition to whatever other official endorsements it may receive. Although it is an expert document, a particular effort was made to receive and take account of comments from States, because of their close involvement in the issues at hand.

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[40] See the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), rule 71 (1).

[41] This was also a fact identified by the Commission on Human Rights (resolutions 1998/36, 2000/32, 2003/33, and 2005/26) and later by the Human Rights Council (resolutions 10/26, and 15/5).

121. After incorporating a final round of comments, the revision was finalized on 31 July 2016.

G. Role of regional systems

122. International human rights law comprises the global (i.e. the United Nations) as well as the regional human rights systems. All the regional systems recognize the right to life, and in many cases are active participants in the ongoing development of the jurisprudence regarding this dynamic right. There is, however, scope for their increased involvement in ensuring its protection. The universality of human rights cannot mean only that all people from all parts of the world are held to the same standards; universality also requires that people from all parts of the world have a role to play in determining what those standards are in the first place. Regional systems play an important role in ensuring that the human rights project is not centrally driven from top down, but also allows for input from all corners of the globe.

123. It has been a high priority of the Rapporteur to collaborate with regional systems on issues related to the right to life. Establishing working relationships between United Nations experts, including those in OHCHR who work on the issue and those in regional systems who focus on the right to life, provides an opportunity for all sides to compare notes, to gain different perspectives on the relevant issues, and to ensure the coherence of the long-term development of the right. The regular meetings in Room XX with high-ranking representatives of regional systems have played an important role in establishing better working relations in general, but it may be time to move towards bringing together the experts in the various systems around particular rights, such as the right to life, on a regular basis.

V. Conclusion

124. **Given what is at stake, it comes as no surprise that the right to life has spawned a coherent and sophisticated set of principles and rules that underlie its protection. At the same time, it should be recognized that this body of law is deeply affected by the prevailing mores, which to some degree change over time, and in some cases differ between cultures. Moreover, new situations arise which challenge established convention. As a result, constant engagement with the application and scope of this foundational right is required, not least from the holder of the mandate on extrajudicial executions.**

125. **Clearly a continuing focus on the relationship between technology in all its forms — weapons (perhaps also cyberweapons) and information technology — and the right to life will be required. The benefits and risks of less-lethal weapons belong to the same category. Vulnerable groups in all their manifestations will require special attention. Patterns of discrimination in the use of force by law enforcement officials could usefully be the subject of a study. The process of ensuring the progressive abolition of the death penalty will warrant close attention and guidance. The impact of terrorism on the right to life remains a concern: on the one hand because of overreaction by States in many cases, but on the other hand because terrorists themselves pose serious**

threats to the right to life. The use of force by non-state actors, and accountability for its abuse, has been largely underexplored.

126. **Accountability for violations of the right to life will be of ongoing importance. The new Minnesota Protocol — an overview of the entirety of the second component of the right to life — provides a platform from which to lift that aspect of the protection of the right to life to a new level. This will require it to be made accessible and known to the full range of those engaged in investigations — from police officers to forensic pathologists to lawyers, non-governmental organizations and others.**